

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.20350 OF 2008, 2737 OF 2013, 19628 OF 2013
AND WRIT PETITION (PIL) No.249 of 2017

COMMON ORDER: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Heard Mr.Tulasi Das for petitioners and the learned Government Pleader (Revenue) for respondents.

The writ petitions are filed challenging G.O.Ms.No.493 Revenue (ASN-V) Department dated 28.04.2006 and also the proceedings No.E4/2530/05 dated 28.03.2007 of District Collector of Ranga Reddy District, as arbitrary, illegal, without jurisdiction and unconstitutional.

The learned counsel made their submissions by referring to the averments in W.P. (PIL) No.249 of 2017 and have stated that reference to the averments in this writ petition would be sufficient for disposing of other writ petitions through this common order. The statement is placed on record.

The 1st petitioner is a registered society claims to be espousing the cause of Scheduled Castes, Scheduled Tribes and Minorities. The affidavit refers to de-notification of Survey No.58 of Chengicherla Village from the notified forest, and the petitioners expect consideration of the claims of members of petitioner society for allotment of house plots in Survey No.58 by the respondents. The respondents, while matters stood thus, issued G.O.Ms.No.493 dated 28.04.2006 imposing ban on assignment of individual house sites in

the urban/rural areas of Hyderabad and Ranga Reddy Districts to beneficiaries under welfare schemes. The imposition of ban on assignment of individual house sites in the districts of Hyderabad and Ranga Reddy is for the following reasons”

- “a) It is housing which is a requirement of poor families and not so much individual house sites and many urban poor families are not able to construct houses on the house sites allotted to them due to lack of resources.
- b) Many individual house sites given in the past have been sold by the assignees and their problem of houseless ness remained unsolved.
- c) Lands allotted as individual house site are developing into slums.
- d) Assignment of individual house site is resulting in corrupt practices involving various sections of the society.
- e) Lands in Ranga Reddy District which are all around the State Capital are required for various public purposes.
- f) Due to heavy migration to the Capital city from many Districts of the state, there is a large unmet demand for houses sites/housing.”

Consequent upon the G.O. read above, the District Collector/3rd respondent issued proceedings No.E4/2530/05 dated 28.03.2007, which read as follows:

“Therefore, for the above said reasons and in view of the present policy of Government on assignment of individual house site pattas in Ranga Reddy District as stipulated in reference 10th cited above, all the patta certificates prepared before 28.04.2006, but not distributed and all the patta certificates which were distributed but possession not given before 28.04.2006 are hereby cancelled.

The Mandal Revenue Officers concerned are hereby directed to take necessary action for registration of the eligible beneficiaries under Union Poor Housing Schemes

where patta certificates were prepared, but not distributed and to those patta certificates distributed, but possession not given and report compliance.”

Hence the writ petition.

Mr.Tulasi Das contends that the ban order denies consideration of application for allotment of individual house sites to the members of Scheduled Castes, Scheduled Tribes etc. and the ban imposed denies the right to shelter accepted by the Government under various schemes and also the Board Standing Orders. The policy made from time to time by Government envisages providing shelter to houseless and the first step in granting assignment of a house site. The respondents ought to consider and finalise the request for assignment of individual house site of Government land without reference to the ban imposed through G.O.Ms.No.493. He further contends that assuming without admitting that with a view to utilizing the available Government land, if ban on assignment of individual houses can be accepted as constitutionally tenable, still the ban being an executive order will have prospective operation and G.O.Ms.No.493, cannot and could not be read as affecting house sites allotted by the respondents. The house site patta is granted in the prescribed form, and in most of the cases there won't be separate proceeding referring to delivery of actual possession of assigned plot to the beneficiary. Therefore, the 3rd respondent could not have cancelled all the pending cases of pattas prepared, but not distributed/pattas distributed but possession not given etc. According to Mr.Tulasi Das,

if no patta is issued, no right in favour of individual is created, and if a patta is issued whether actual possession of assigned plot is delivered or not is examined on case to case basis, and even possession if is not given, the assignment of house plots by referring to G.O.Ms.No.493 or proceedings dated 28.03.2007 could not be recalled through a general order. He prays for allowing the writ petition.

Learned Government Pleader for Revenue submits that the Government upon due deliberation, particularly after taking note of available Government land or cost of acquisition of land for assignment of individual house site pattas on another land having regard to the implementation of group housing programme, decided to utilise the available Government land for more number of beneficiaries. The Government Pleader does not seriously dispute the right of eligible members of SCs/STs/ Minorities for consideration of benefits including house site, but contends that the proposed beneficiaries cannot demand enforcement of a right actually not created in their favour or insist on enforcement in a particular way. Therefore, according to him, the ban imposed through impugned G.O. on assignment of individual house site pattas is for well considered reasons and the challenge is not laid against the G.O. as opposing to any law, much less any of the Articles in the Constitution. He further contends that the ban, if imposed is followed strictly, the Government will have sufficient land for implementing the welfare schemes now operated in the State of Telangana. In other words, the available Government land can be

used for assigning constructed tenements to more number of eligible beneficiaries. Therefore, he submits that the challenge to G.O.Ms.No.493 is untenable and liable to be rejected. He further contends that proceedings dated 28.03.2007 are part of internal correspondence and the petitioners in this Pro-Bono Publico cannot challenge the proceedings without showing how the petitioners or its members are actually aggrieved by the proceedings dated 28.03.2007. He fairly states that in a given case the respondents, if have issued a house site patta and there exists a dispute whether the possession is actually delivered to the beneficiary or not, the dispute is examined on case to case basis and the order of assignment is cancelled by orders passed individually. He further submits that the respondents are also entitled to cancel the assignment for other grounds available in this behalf illustriously stated, house if is not constructed within time stipulated in the grant and/or that the assignment is transferred to third party or breach is committed by beneficiary; fraud misrepresentation is played in obtaining the assignment.

We have perused the record and noted the submissions.

The first argument of petitioners is that G.O.Ms.No.493 dated 28.04.2006 is illegal and unconstitutional as impugned G.O. bans assignment of individual house sites to people from weaker sections. The grounds of challenge and reply are already adverted to. For brevity, the grounds are not restated. Prima facie, we are of the view that the petitioners or for that matter a person who is entitled to consideration of his or her case in a welfare scheme

implemented for providing benefit of housing by the Government is entitled for consideration of his or her case in accordance with the terms of the scheme; as per the eligibility of each one of the applicants and that there is no discrimination either in consideration or allotment of house sites at the hands of respondent. The ban on assignment of individual house plots firstly is a policy decision which is taken to utilise the available Government land in erstwhile Hyderabad and Ranga Reddy Districts to the maximum extent possible. The other practical difficulties which are addressed by the learned Government Pleader are also germane in taking a decision by the Government in such policy matters. The common knowledge of horizontal growth of these two districts cannot also be ignored by this Court while examining the challenge to G.O.Ms.No.493. The challenge to G.O. is not founded on any of the legal grounds available to a person who is expecting assignment from the Government but the very denial is stated as illegal and unconstitutional. We are of the view that either the petitioners or the members of SCs/STs/Minorities i.e. beneficiaries do not have either vested or statutory right to insist upon assignment of house site in Hyderabad and Ranga Reddy Districts. The Government may be for the some practical reasons i.e. sufficient land is available in other districts etc. did not impose ban of assignment of individual plots to individual members of SCs/STs/ Minorities. The cases for assignment are considered not only on the eligibility of the individuals but also having regard to the unencumbered available land at the disposal of the Government in a particular District. The

respondents as policy decision, if decide to utilise the available land in Hyderabad and Ranga Reddy Districts, for maximum number of persons while implementing group scheming etc. such decision on any of the grounds now canvassed by the petitioners cannot be disturbed by this Court. Therefore, the challenge laid to G.O.Ms.No.493 dated 28.04.2007 fails and is accordingly rejected.

Now, let us advert to the challenge to the operative portion of Circular dated 28.03.2007.

Before examining the legality or otherwise of the contentions, let us examine the purport of proceedings dated 28.03.2007. Firstly, the District Collector refers to G.O.Ms.No.493 dated 28.04.2006 and cancels the assignment of land in two categories of cases namely, patta certificates prepared but not distributed and patta certificates distributed but possession not given before 28.04.2006.

We are of the view that 3rd respondent firstly has not appreciated the policy decision of the Government made through G.O.Ms.No.493 dated 28.04.2006. The ban imposed through G.O.Ms.No.493 has to be interpreted and understood as prospective in nature, in no way can be understood as disturbing or taking away the genuine allotment in favour of a beneficiary made prior to 28.04.2006. Secondly, the District Collector does not have authority or jurisdiction to cancel by general order the two categories of assignments referred to above. Even assuming that, as matter of fact, there exists these two varieties of cases namely, both certificates prepared before 28.04.2006 but not distributed and patta certificates distributed but possession not given on

28.04.2006, this Court upon examining both categories, is of the view that if patta certificates are not distributed, there is no need to cancel un-communicated patta certificate. On the other hand, the patta certificate if is already issued, however, a dispute on whether possession is actually delivered or is not delivered arises for decision. Such cases come under the necessity of conducting enquiry and passing orders on case to case basis. There is yet another contingency where house site pattas are cancelled, as rightly contended by the learned the Government Pleader that the patta certificates were prepared and issued prior to 28.04.2006, are vitiated by fraud, misrepresentation etc; or that the assignee or beneficiary committed breach of conditions of assignment etc. We are of the view that these are distinct cases in which notices are issued by the competent authority on case to case basis, opportunity is afforded to assignee or beneficiary, enquiry into the matter is conducted and orders passed. Hence the power or jurisdiction for exercising the authority on case to case basis cannot be treated as conferring jurisdiction or power to cancel the two categories of assignment through proceedings dated 28.03.2007. Therefore, we hold that the proceedings dated 28.03.2007 are illegal and give retrospective effect to G.O.Ms.No.493.

For the above reasons, the proceedings dated 28.03.2007 alone are set aside as indicated above. The Revenue Department is given liberty to examine individual cases, and if circumstances warrant, issue notice, afford opportunity to beneficiary and pass orders.

The writ petitions are ordered as indicted above. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:30.10.2018
Stp

