IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

* * * *

WRIT PETITION NO.38986 OF 2017,
CONTEMPT CASE NO.191 OF 2017
AND
WRIT PETITION NO.396 OF 2018

Between:

Smt.Byredla Chinna ... Petitioner

and

The State of A.P. rep. by its Principal
Secretary, Municipal Administration
Department and others ... Respondents

Date of Judgment Pronouncement: 28th December, 2018

SUBMITTED FOR APPROVAL:

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No

3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

_____
SANJAY KUMAR, J

* THE HONOURABLE SRI JUSTICE SANJAY KUMAR

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HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

< Gist:

> Head Note:

! Counsel for petitioner : Mr. Kowturu Pavan Kumar for Mr. M.M.M.Srinivas Rao.

^ Counsel for respondents : Government Pleader for Revenue (AP)
: Mr. S.Lakshminarayana Reddy, Standing Counsel for GVMC
: Ms. B.Sapna Reddy for
: Mr.B.Sudhakar Reddy

? CASES REFERRED: --
1. 2002 (4) ALD 203 (DB)
2. 1992 Supp (1) SCC 323
3. (1997) 7 SCC 592
4. 2012 (1) ALT 524
5. 2013 (2) ALD 25
6. AIR 1991 SC 1453
7. 1994 (3) ALT 73 (FB)
8. W.P.No.5130 of 2016 and batch dated 18.10.2016
9. 2002 (5) ALD 763
10. 1990 (2) ALT 514 (DB)

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.38986 OF 2017,
CONTEMPT CASE NO.191 OF 2017
AND
WRIT PETITION NO.396 OF 2018

COMMON ORDER

Byredla Chinna, the petitioner in the two writ petitions, is the Sarpanch of Cherukupally Village, Bhogapuram Mandal, Vizianagaram District.

She filed W.P.No.38986 of 2017 assailing the action of the Greater Visakhapatnam Municipal Corporation (GVMC) in attempting to demolish her construction in the premises bearing No.1-49-182/1 at Banglametta, Tagarapuvalasa Village, Bheemunipatnam Mandal, Visakhapatnam District, despite the order dated 06.08.2016 passed by the Tahsildar, Bheemunipatnam Mandal, Visakhapatnam District, advising her to seek regularization of her occupation over the said premises. She sought a consequential direction to the GVMC not to demolish the structure and a further direction to the District Collector, Visakhapatnam, and the Tahsildar, Bheemunipatnam Mandal, Visakhapatnam District, to regularize her occupation over the subject Government land by receiving the basic value as per G.O.Ms.No.118 dated 30.03.2016.

She then filed W.P.No.396 of 2018 assailing the notice dated 23.11.2017 issued by the Zonal Commissioner, GVMC, under Section 636 of the Greater Hyderabad Municipal Corporation Act, 1955 (*for brevity*, 'the Act of 1955'), which applies to the GVMC, by virtue of Section 7(1) of the Visakhapatnam Municipal Corporation Act, 1979, requiring her to remove her unauthorized construction. She sought a direction to the authorities not to take any action in respect of the construction made by her in the subject premises till the regularization proceedings were finalized.

No interim orders were passed in W.P.No.38986 of 2017. In W.P.No.396 of 2018, an interim order was passed on 12.02.2018. By the said order, taking note of the fact that the son of Byredla Chinna had committed suicide on 10.02.2018 and that his obsequies had to be performed, this Court granted stay of demolition for a period of two weeks, i.e., up to 27.02.2018. This Court also made it clear that the order was passed owing to the said circumstance and not on merits. There was no extension of the said order and it is an admitted fact that the unauthorized construction made by Byredla Chinna has been demolished in part.

Byredla Chinna's case is that she purchased an extent of land admeasuring 193 square yards in the premises bearing No.1-49-182/1 in Sy.No.27-1 of Banglametta, Tagarapuvalasa Village, Bheemunipatnam Mandal, Visakhapatnam District, under registered sale deed dated 10.11.2006, from one Pampana Suryanarayana. However, it is not in dispute that she is actually in occupation of Government land in Sy.No.26 of Tagarapuvalasa Village and also made construction therein.

In this regard, it may be noted that G.Rama Surappadu, the sixth respondent in W.P.No.38986 of 2017 and the seventh respondent in W.P.No.396 of 2018, filed W.P.No.14247 of 2016 before this Court complaining that no action was being taken upon his representation dated 24.02.2016 in relation to the unauthorized construction made by Byredla Chinna in Government land. The said writ petition was disposed of, *vide* order dated 26.04.2016, directing the authorities concerned to take appropriate action, as warranted, in accordance with law after giving an opportunity of hearing to all parties concerned. Pursuant to this order, the Tahsildar, Bheemunipatnam Mandal, conducted an enquiry in the presence of G.Rama Surappadu and Byredla Chinna and passed order dated

06.08.2016 confirming that Pampana Suryanarayana, the vendor of Byredla Chinna, was assigned an extent of 145.2 square yards in Sy.No.26 Part of Tagarapuvalasa Village on 15.03.1982, under weaker sections quota, for construction of a house subject to the condition that he should not alienate the said land without obtaining the permission of the Revenue Divisional Officer. He however constructed a house without sanction, by encroaching over a further extent of 48.4 square yards of Government land, and sold the total extent of 193 square yards along with the building to Byredla Chinna under the registered sale deed dated 10.11.2006, wrongly describing that the property sold was situated in Sy.No.27/1 of Tagarapuvalasa Village. The Tahsildar however noted that G.O.Ms.No.118 dated 30.03.2016 was issued for regularizing encroachments in Government lands and advised Byredla Chinna to file a claim for regularization in terms thereof within seven days.

Byredla Chinna accordingly submitted a regularization application through Mee-seva on 09.08.2016. In the meanwhile, the Zonal Commissioner, GVMC, issued notice dated 08.08.2016 to her under Section 452 of the Act of 1955. Therein, he stated that she had made unauthorized construction of a G+2 RCC slab building at D.No.1-49-182/1 in Sy.No.26 Part of Tagarapuvalasa Village contrary to the Building Rules, Zoning Regulations and G.O.Ms.No.168 dated 07.04.2012. He directed her to produce the valid plan copy, if any, in respect of the structure on the ground within a time frame and cautioned her that if she failed to show-cause in the manner required within the stipulated time, the building would be removed. Byredla Chinna submitted her reply dated 10.08.2016 stating that she had applied for regularization of her occupation over Government land under G.O.Ms.No.118 dated 30.03.2016 and to revoke the notice.

While so, Contempt Case No.191 of 2017 was instituted by G.Rama Surappadu on 01.02.2017 alleging willful disobedience to the order dated 26.04.2016 passed by this Court in W.P.No.14247 of 2016. His grievance therein was that no action had been taken by the GVMC authorities upon his representation dated 24.02.2016 in terms of the said order. Byredla Chinna tried to get impleaded in this contempt case but her implead application was dismissed on 08.12.2017. She also chose to file W.P.No.38986 of 2017 before this Court on 17.11.2017 assailing the action of the GVMC authorities in trying to demolish the structure in the subject premises despite the order dated 06.08.2016 passed by the Tahsildar, Bheemunipatnam Mandal, with regard to regularization of her possession over Government land. She sought consequential directions not to demolish the structure in the subject premises and to regularize her occupation thereof by receiving the basic value as per G.O.Ms.No.118 dated 30.03.2016.

Byredla Chinna then made representation dated 18.11.2017 to the Tahsildar, Bheemunipatnam Mandal, stating that she had not received any details as to the payment that had to be made by her for regularization of her occupation over the subject Government land and seeking information as to why her payment was not being received. By endorsement dated 21.11.2017, the Deputy Tahsildar, Bheemunipatnam Mandal, informed Byredla Chinna that the Government had issued G.O.Ms.No.388 dated 24.08.2017 for regularization of unobjectionable encroachments in Government lands and that all the applications received under G.O.Ms.No.118 dated 30.03.2016 would be examined as per the norms laid down in G.O.Ms.No.388 dated 24.08.2017. At that stage, the Zonal Commissioner, GVMC, issued notice dated 23.11.2017 under Section 636 of the Act of 1955 directing Byredla Chinna to remove the unauthorized

construction within one day. According to Byredla Chinna, the GVMC authorities thereafter demolished part of the construction on 25.11.2017. She then filed W.P.No.40192 of 2017 before this Court. Surprisingly, she did not choose to challenge therein the GVMC's notice dated 23.11.2017 issued under Section 636 of the Act of 1955, though the GVMC authorities were arrayed as respondents. Her grievance therein was only directed against the inaction of the Revenue authorities in issuing a valuation certificate in the context of the pending regularization proceedings. However, by interim order dated 29.11.2017 passed in the writ petition, a learned Judge of this Court suspended the Section 636 notice dated 23.11.2017 and directed the GVMC to restore *status quo ante* within a time frame. Aggrieved thereby, the GVMC preferred W.A.No.1910 of 2017. The said appeal was disposed of by order dated 15.12.2017, wherein a Division Bench of this Court took note of the aforestated facts and observed that the order under appeal could not have been passed and set it aside. Liberty was however given to Byredla Chinna to question the Section 636 notice dated 23.11.2017 by way of appropriate proceedings. She then filed W.P.No.396 of 2018 assailing the said notice and seeking a direction to the authorities not to take further action in respect of the subject premises till the regularization proceedings were finalized.

It is an admitted fact that Byredla Chinna Thosulareddy, the husband of Byredla Chinna, owns a house along with an extent of 96.80 square yards at Cherukupally Village. Byredla Chinna herself owns a separate extent of land admeasuring 968 square yards in Cherukupally Village. Tagarapuvalasa Village is at a distance of three kilometres from Cherukupally Village.

The stand of the Tahsildar, Bheemunipatnam Mandal, Visakhapatnam District, as set out in his counter-affidavit filed in W.P.No.396 of 2018, is as under: Byredla Chinna had encroached upon an extent of 192 square yards

of Government land in Sy.No.26 at Banglametta, Tagarapuvalasa Village, Bheemunipatnam Mandal. She submitted application dated 08.08.2016 through Mee-seva seeking regularization of the said encroachment under G.O.Ms.No.118 dated 30.03.2016. The Government, in the meanwhile, issued consolidated orders on the scheme of regularization of encroachments in Government lands for dwelling units up to 500 square yards, for below and above poverty line families, *vide* G.O.Ms.No.388 dated 24.08.2017. As per this G.O., the following are the rates to be paid by encroachers for regularization of their dwelling units.

Sl. No.	Extent in Sq. Yards	Cost in Rural & Urban Areas
1.	1 to 100	Free for BPL families
2.	1 to 100	7.5% of Registration department basic value of 2013 for APL families
3.	101-250	15% of Registration department basic value of 2013 for APL & BPL families
4.	251-500	30% of Registration department value of 2013 for APL & BPL families
5.	501 and above	Eviction/Auction of encroachment

The application submitted by Byredla Chinna is pending consideration in terms of this later G.O. Teams were formed by the District Administration for surveying encroached lands and after completion of such survey, final orders would be passed, duly following the procedure laid down in the G.O.

The stand of the GVMC, as spelt out in the counter-affidavit filed by its Zonal Commissioner in C.C.No.191 of 2017, is as follows: Pursuant to the order dated 26.04.2016 passed by this Court in W.P.No.14247 of 2016, notice dated 26.07.2016 was issued calling upon G.Rama Surappadu and Byredla Chinna to attend an enquiry on 05.08.2016. The enquiry was held on 06.08.2016 and both parties were present. However, upon inspection, it was found that Byredla Chinna had constructed a building consisting G+2

floors in an extent of 193 square yards in Sy.No.26 Part of Tagarapuvalasa Village, Bheemunipatnam Mandal, and show-cause notice dated 08.08.2016 was issued to her under Section 452(2) of the Act of 1955. She submitted her explanation dated 10.08.2016 stating that the Tahsildar, Bheemunipatnam Mandal, had conducted an enquiry and issued an order on 06.08.2016, whereupon she submitted application dated 09.08.2016 to the District Collector, Visakhapatnam District, seeking regularization of her encroachment over the Government land in accordance with G.O.Ms.No.118 dated 30.03.2016. Owing to the pendency of this application, no further action was taken at that time.

In the context of the rival pleadings and the arguments advanced by the learned counsel, this Court called upon the Government of Andhra Pradesh to justify its scheme of regularizing encroachments over valuable Government lands at throw-away prices. Be it noted that though no challenge was made to the Government's regularization policy in these cases, it would be within the domain of this Court to examine the same in exercise of the plenary jurisdiction vesting in it under Article 226 of the Constitution.

Thereupon, the Special Chief Secretary to Government, Revenue (Land, Endt. & DM) Department, Government of Andhra Pradesh, filed his counter-affidavit stating as follows: The patta allegedly issued to Pampana Suryanarayana, the vendor of Byredla Chinna, was subjected to verification as to its genuineness. The Tahsildar, Bheemunipatnam Mandal, thereupon submitted a report stating that 62 plots in Sy.No.26 of Tagarapuvalasa Village were assigned, as per the relevant Register pertaining to the year 1982. However, the copy of the house site patta said to have been granted to Pampana Suryanarayana, available on record, showed Plot No.88 but the entire page was struck off in the Register and did not bear the signature of

the Tahsildar concerned. The Tahsildar further stated that in the copy of the house site patta allegedly granted to Pampana Suryanarayana, the name was overwritten. It was ultimately held to be a fake document, as the said patta was issued on 15.03.1982 whereas the patta under which Pampana Suryanarayana claimed title was dated 10.03.1983 and his name was also overwritten. The Special Chief Secretary affirmed that Byredla Chinna had encroached upon Government land.

With regard to the regularization policy, the Special Chief Secretary stated that earlier, the Government had issued G.O.Ms.No.118 dated 30.03.2016 approving, as a policy, regularization of unobjectionable encroachments over Government lands by way of dwelling units in urban areas up to 500 square yards for removal of hardship to the people. Thereafter, the Government issued G.O.Ms.No.338 dated 21.07.2016 amending the earlier order, permitting regularization free of cost in so far as unobjectionable encroachments over Government lands by way of dwelling units in rural areas up to 100 square yards by below poverty line families were concerned. G.O.Ms.No.135 dated 30.03.2017 was then issued by the Government approving a common scheme for regularization of unobjectionable encroachments in Government lands by way of dwelling units, in both rural and urban areas, up to 100 square yards free of cost in so far as below poverty line families were concerned, in supersession of G.O.Ms.No.296 dated 12.08.2015. Thereafter, the Government issued G.O.Ms.No.299 dated 17.07.2017 permitting regularization of encroachments in Municipal lands up to an extent of 100 square yards by below poverty line families, provided such encroachments were scattered in existing residential localities and such encroached lands were not contiguous, whereby they could be clubbed together for taking up group housing. The Special Chief

Secretary stated that the scheme for regularization of unobjectionable encroachments over Government lands was reviewed and the Government felt that the orders needed to be consolidated for both rural and urban areas. Accordingly, in supersession of the earlier orders, the Government issued G.O.Ms.No.388 dated 24.08.2017 stipulating the guidelines for regularization of unobjectionable encroachments over Government lands by way of dwelling units by below poverty line and above poverty line families in rural and urban areas in the entire State. In terms of this policy decision, encroachments by below poverty line families up to an extent of 100 square yards in both rural and urban areas was to be regularized free of cost. As regards encroachments of larger extents, regularization was to be upon payment of the percentage of the basic value, stipulated thus:

Sl. No.	Extent in Sq. Yards	Cost in Rural & Urban Areas
1.	1 to 100	Free for BPL families
2.	1 to 100	7.5 % of Registration department basic value of 2013 for APL families
3.	101-250	15 % of Registration department basic Value of 2013 for APL & BPL families
4.	251-500	30 % of Registration department value of 2013 for APL & BPL families
5.	501 and above	Eviction/Auction of encroachment

The Special Chief Secretary pointed out that regularization of encroachments would be allowed only up to a maximum of 500 square yards and not over and above that. The cut-off date for such encroachments for construction of dwelling units was fixed as 01.01.2014 and only one dwelling unit per family was to be considered for regularization. 'Family' was defined to include not only the person involved but also his spouse, apart from his minor children and his minor siblings who were dependent on him. He justified this policy stating that it had been taken in the interest of the public who had occupied unobjectionable Government lands for dwelling units.

In this regard, it may be noted that the earlier order, being G.O.Ms.No.296 dated 12.08.2015, cited justification for such regularization as the people and people's representatives had brought it to the notice of the Government that a large number of poor families had encroached Government lands and constructed dwelling houses but were denied pattas and were therefore under constant threat of eviction. The scheme that was formulated thereunder, which was restricted to only urban areas, was applicable only to families below the poverty line. Surprisingly, G.O.Ms.No.118 dated 30.03.2016, which was the next in the progression of these regularization schemes, made no mention of the justification for G.O.Ms.No.296 dated 12.08.2015, inasmuch as there is no mention therein of only poor families being granted relief thereunder. On the other hand, this G.O. stated that it had been brought to the notice of the Government that a large number of poor families had encroached Government lands and constructed dwelling houses and were seeking regularization of these encroachments and the Government opined that as many of the encroachments were unobjectionable and regularization would remove the hardship of the people, the scheme was formulated. The eligibility criterion as per this scheme was that any family, which was below the poverty line or above the poverty line, would be eligible for regularization, provided that such family did not have any house anywhere in the State.

G.O.Ms.No.338 dated 21.07.2016, being the next in line, was purportedly issued to address the discrimination in relation to regularization of encroachments by below poverty line families in urban areas free of cost but not in rural areas, where they had to pay 60% of the basic value. G.O.Ms.No.135 dated 30.03.2017 was then issued as the Government felt that the different Government Orders for urban and rural areas needed to be

consolidated into a common order, whereby a common scheme for regularization of unobjectionable encroachments in Government lands by way of dwelling units both in urban and rural areas to an extent of upto 100 square yards by below poverty line families free of cost was put in place. Significantly, the condition stipulated in G.O.Ms.No.118 dated 30.03.2016 to the effect that the family that seeks regularization of such encroachment should not have any other house anywhere in the State was done away with and the Government permitted regularization of one dwelling unit per family irrespective of whether such a family already owned a house elsewhere. This G.O., however, was restricted to below poverty line families only and the maximum area for regularization was stipulated to be 100 square yards, whereupon regularization would be done free of cost. G.O.Ms.No.299 dated 17.07.2017 was then issued approving regularization of encroachments in Municipal lands up to an extent of 100 square yards by below poverty line families, provided such encroachments were scattered in the existing residential localities and the pieces of lands on which such encroachments were existing were not contiguous and such pieces could not be clubbed together for taking up group housing. G.O.Ms.No.341 dated 27.07.2017 was issued by way of an amendment to G.O.Ms.No.135 dated 30.03.2017. Thereby, the regularization application was permitted to be filed within 120 days from the date of issuance of G.O.Ms.No.325 dated 26.07.2017 instead of 120 days from the date of coming into operation of the scheme.

G.O.Ms.No.388 dated 24.08.2017, being the last in this line-up, purports to be a consolidated order for regularization of encroachments over Government lands by way of dwelling units both in rural and urban areas. It stipulates the rates payable for regularization in relation to lands admeasuring more than 100 square yards and up to 500 square yards but

left it open to the Special Chief Secretary & Chief Commissioner of Land Administration, Andhra Pradesh, and the District Collectors to issue operational guidelines. In the Annexure to G.O.Ms.No.388 dated 24.08.2017, the cut-off date for occupation of Government lands for construction of dwelling units was fixed as 01.01.2014 and encroachments were to be considered for regularization only if dwelling units (houses, huts, etc.) were constructed and encroachments of vacant land alone was not to be considered. Again, there is no stipulation to the effect that those who already owned dwelling units elsewhere would not be entitled to such regularization but they were all allowed to claim regularization over one dwelling unit in Government land irrespective of any number of houses that they may own independently. The Annexure also contained Clause 16 which, in effect, set out what constitutes objectionable encroachments and it reads as follows:

> '16.Regularization only in Unobjectionable encroachments
>
> Only Unobjectionable encroachments in Government lands shall be considered for regularization. No regularization shall be considered in respect of the following cases:-
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> a) Sites affected under the alignment of Master Plan/Zonal Development Plan/Road Development plan.
> b) Constructions which have come up in open spaces of approved layouts.
> c) Constructions made on alignment of Water bodies, Grave Yards, Foreshore of FTL areas of drinking water tanks/Irrigation tanks and treatment areas.
> d) Areas earmarked for treatment plants, Green belts, buffer zone etc.
> e) Sites falling under MFL of rivers.
> f) Sites required for public purpose.
> g) Lands, which are in the opinion of the Committee are highly valuable and cannot be considered for transfer of Rights.
> h) Public footpaths.

G.O.Ms.No.24, Revenue (Assgn.I) Department, dated 12.01.2018, was then issued by the Government of Andhra Pradesh extending the time for submission of applications under G.O.Ms.No.388 dated 24.08.2017 by a further period of three months.

This being the background of the present regularization policy of the Government, it is interesting to note that this policy is neither new nor novel. In C.KULSUM REDDY V/ s. STATE OF A.P.[1], a Division Bench of this Court dealt with a public interest litigation case challenging G.O.Ms.No.419 dated 30.07.1998, whereunder the Government proposed to regularize unauthorised constructions. Having considered the matter at length, the Division Bench observed that the counter-affidavit filed by the Government did not even disclose the power of the Government to issue such a G.O. Reference was also made by the Bench to G.O.Ms.No.87 issued in the year 1992, whereunder unauthorised constructions made prior to 31.12.1991 were regularized. The Bench noted that another order came to be passed on 14.08.1992, just six months after the issuance of G.O.Ms.No.87, whereby the concession thereunder was extended to Vijayawada, Guntur, Tenali Urban Development Authority region also as a one-time measure. This policy was thereafter extended from time to time under G.O.Rt.No.192 dated 05.11.1992, G.O.Rt.No.235 dated 16.02.1993, G.O.Rt.No.240 dated 18.02.1993, G.O.Rt.No.1240 dated 01.09.1993, G.O.Rt.No.424 dated 06.04.1994, G.O.Rt.No.425 dated 06.04.1994, G.O.Rt.No.710 dated 17.06.1995 and G.O.Rt.No.711 dated 17.06.1995. The Government then came up with G.O.Ms.No.243 dated 22.05.1996, whereunder unauthorised constructions made up to 30.08.1996 were sought to be regularized. Then, G.O.Ms.No.356 was issued on 17.12.1997, whereby unauthorised constructions made up to 30.09.1997 were sought to be regularized. Then, G.O.Ms.No.373 dated 01.07.1998 was issued whereunder unauthorised constructions made prior to 30.06.1998 were sought to be regularized. At that stage, the impugned G.O.Ms.No.419 dated 30.07.1998 came to be

[1] 2002 (4) ALD 203 (DB)

issued whereby time was again extended beyond the dates on which unauthorised constructions were to be regularized. Keeping these facts in mind, the Division Bench observed that it could not be accepted that the Government had kept in view the hardship of people who had constructed their houses unauthorisedly and made a one-time exception under its executive policy as was suggested in the counter-affidavit. The Division Bench pointed out that it had been the regular policy of the Government for more than a decade to allow people to go for unauthorised constructions and then regularize them. Observing that not only the environment and ecology of the city but also the interests of honest law abiders were jeopardised by such a policy, the Division Bench pointed out that no power had been cited by the Government enabling it to issue such Government Orders. It appears that the Principal Secretary to Government then filed an affidavit before the Division Bench saying that such a scheme would not be repeated but the Division Bench expressed its doubts as to whether the same could be accepted as the earlier orders had also been issued with the rider that the same were a one-time exception. The Division Bench accordingly quashed the impugned Government Order.

At this stage, it would be apposite to consider and analyse the case law cited by Sri Kowturu Pavan Kumar, learned counsel appearing for Sri M.M.M.Srinivas Rao, learned counsel for Byredla Chinna:

In UNION OF INDIA V/s. DEOKI NANDAN AGGARWAL[2], the Supreme Court reiterated the well settled principle that it is not the duty of the Court either to enlarge the scope of legislation or the intention of the legislature when the language of the provision is plain and unambiguous. It was pointed out that the power to legislate has not been conferred on the

[2] 1992 Supp (1) SCC 323

Courts and therefore, no words can be added to a statute or read into it when they are not there. The Supreme Court further observed that assuming that there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency and must decide what the law is and not what it should be. The Supreme Court categorically held that judicial activism could not be invoked to set at naught legislative judgment as the same would be subversive of Constitutional harmony and the comity of instrumentalities. It may however be noted that what the High Court had done in that case was to modify and alter a scheme so that the same could be applied to others, who were not otherwise entitled under the scheme. The Supreme Court therefore held that doing so by applying the principle of affirmative action was nothing short of clear and naked usurpation of legislative power. However, it may be noted that the regularisation policy of the Government is not traceable to any legislative source but is based on executive instructions issued from time to time.

In M.P.OIL EXTRACTION V/s. STATE OF M.P.[3], the Supreme Court observed that the executive authority of the State must be held to be within its competence in framing a policy for the administration of the State and unless the policy framed is absolutely capricious and can be clearly held to be arbitrary, not being informed by any reason whatsoever, and founded on the mere *ipse dixit* of the executive functionaries, thereby offending Article 14 of the Constitution, or such policy offends other Constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not overstep its limit and tinker with the policy decision of the executive functionaries of the State. As pointed out in C.KULSUM REDDY[1], the Government is not even in a position to explain as to in

[3] (1997) 7 SCC 592

exercise of what power it continuously floats schemes to reward law breakers. Such executive instructions, being opposed to the Constitutional scheme of enforcing the laws, therefore suffer from the vice of arbitrariness.

In POONAMCHAND V/s. GREATER HYDERABAD MUNICIPAL CORPORATION[4], a learned Judge of this Court observed that the very purpose of issuing a notice under Section 452(1) of the Act of 1955 is to give an opportunity to the person who constructed a building in an illegal or unauthorised manner, to submit his explanation and therefore, it is obligatory on the part of the Municipal authorities to consider the explanation and only when such explanation is not offered or found to be unsatisfactory for reasons recorded, the Municipal authorities can proceed with further action and issue a notice under Section 636 of the Act of 1955. In K.ASHOK KUMAR V/s. THE GREATER HYDERABAD MUNICIPAL CORPORATION[5], a learned Judge of this Court held to the same effect.

Now, a look at the precedential law cited by the other side:

In PRATIBHA CO-OPERATIVE HOUSING SOCIETY LTD. V/s. STATE OF MAHARASHTRA[6], the Supreme Court was dealing with unauthorised constructions in a 36 storeyed building in an important locality in the city of Bombay. In that context, the Supreme Court observed that the tendency towards raising unlawful constructions and unauthorised encroachments was increasing in the entire country and such activities were required to be dealt with by a firm hand as such unlawful constructions were against public interest and hazardous.

In 3 ACES V/s. MUNICIPAL CORPORATION OF HYDERABAD[7], a Full Bench of this Court dealt with the scope of Section 452 of the Act of

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[4] 2012 (1) ALT 524
[5] 2013 (2) ALD 25
[6] AIR 1991 SC 1453
[7] 1994 (3) ALT 73 (F.B.)

1955. The Full Bench observed that the provisions of the Act of 1955 and the bye-laws and regulations made thereunder were framed by the competent authority to be observed and not to be breached. Their object was to achieve systematic, orderly and methodical development of cities in the interest of society at large. Referring to Section 452 of the Act of 1955, the Full Bench held that though the word used therein is 'may' and it was not mandatory that demolition should be resorted to without exception, the same needed to be understood in the light of the observations made by the Supreme Court in various cases and if, in any given case, the Commissioner came to the conclusion that the construction deserved to be demolished, that decision having been taken in public interest should not be interfered with normally. The Full Bench therefore concluded that it could not be said, as a matter of law, that the power reserved under Section 452 of the Act of 1955 is not mandatory. The Full Bench formulated the following guidelines to be adopted by Municipal authorities in respect of illegal constructions:

(1) 'In cases where applications have been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.

(2) Whatever is stated in guideline number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of "The Act".

(3) If no application has been filed seeking permission and the construction is made without any permission whatsoever, it is open to the Corporation to demolish and pull down or remove the said unauthorised structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorised construction.'

The Full Bench further observed that when Municipal authorities come to a conclusion, keeping the aforestated guidelines in view, that the constructions in question required to be demolished or pulled down, it should follow this procedure:

(i) 'The demolition should not be resorted to during festival days declared by the State Government as public holidays excluding Sundays. If the festival day declared by the Government as a public holiday falls on a Sunday, on that Sunday also, the Corporation should not resort to demolition.

(ii) In any case, there should not be any demolition after sun set and before sun rise.

(iii) The corporation should give notice of demolition as required by the statute fixing the date of demolition. Even on the said date, before actually resorting to the demolition, the Corporation should give reasonable time, depending upon the premises sought to be demolished, for the inmates to withdraw from the premises. If within the time given the inmates do not withdraw, the Corporation may proceed with actual demolition.'

In D.HEMA LATHA V/s. THE COMMISSIONER, GREATER HYDERABAD MUNICIPAL CORPORATION[8], a Division Bench of this Court was dealing with the claim of those who had submitted applications for regularization of their illegal constructions under G.O.Ms.No.152 dated 02.11.2015 to the effect that their illegal structures should not be demolished pending consideration of such regularization applications. The Division Bench directed the Municipal authorities not to take coercive action to demolish the illegal structures till orders were passed on the regularization applications but in cases where such applications were rejected, the Municipal Corporations were given liberty to initiate action for demolition of the structures in accordance with law.

[8] W.P.No.5130 of 2016 and batch dated 18.10.2016

In ARVIND L. ABHYANKAR V/s. MUNICIPAL CORPORATION OF HYDERABAD[9], a learned Judge of this Court directed demolition of a building notwithstanding the fact that it would result in hardship to the purchasers. The learned Judge observed that he was constrained to add that the lethargy on the part of the Municipal authorities in taking timely action against violators of law was leading to proliferation of illegal and unauthorised constructions. The learned Judge further observed that the fact that such large scale illegal and unauthorised constructions were being carried out by builders was an indication that officials of the Municipal Corporations were hand in glove with such builders and it was high time that the Government came up with a law providing a mechanism to identify and punish violators of law - not only the builders, but also the officials who encourage such builders to make illegal and unauthorised constructions.

In MUNICIPAL CORPORATION OF HYDERABAD V/s. ASADULLAH PASHA[10], a Division Bench of this Court was dealing with a notice issued under Section 452 of the Act of 1955 followed by a notice under Section 636 thereof. Section 636 does not provide any specific period for removal of the structures and it is for the Commissioner to determine the period for such removal. In that case, as the petitioner had not given any explanation to the notices issued under Section 461, Section 452 and Section 636, the Division Bench observed that it was not within the province of the Court to fix the time within which the removal should be made. The Division Bench also found fault with the petitioner for having approached the Court with unclean hands by making wrong statements as to the nature of his constructions and dismissed his writ petition.

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[9] 2002 (5) ALD 763
[10] 1990 (2) ALT 514 (DB)

It is pertinent to note that the Government of Andhra Pradesh was willing to give a commitment to this Court in C.KULSUM REDDY[1] that it would not come out with any further regularization schemes in relation to unauthorized constructions. However, this Court was not willing to accept such a promise as the past conduct of the State showed that though every such scheme was floated as a one-time measure, it was perpetuated time and again. Unfortunately, the same situation continues even as on date. Vote-bank policies of the Government of the day aimed at rewarding law breakers to the detriment of those who abide by the rule of law invariably send out a wrong signal, apart from being violative of Constitutional principles, including the directive principles and more particularly, Article 48A in Part-IV of the Constitution. It would also be violative of Article 51A in Part-IV A of the Constitution, which details fundamental duties of every citizen of India, one of which is to protect and improve the environment and to strive towards excellence in all spheres of individual and collective activity. Needless to state, allowing those who encroach upon others' properties and proceed to make constructions illegally can hardly be said to qualify as 'working collectively' with those who abide by the law, obtain municipal sanction for making constructions and do so in their legally owned property. The manner, in which Government Orders were issued, as already stated *supra*, starting off with below poverty line families and benefiting those who had no houses but now aimed at allowing rich and poor alike to encroach upon Government land, be it in rural or urban areas, up to an extent of 500 metres and thereafter seek regularization of their illegal occupation by paying a mere percentage of the market value, is retrograde to say the least and is a fraud upon Constitutional principles.

Be it noted that even lands in Hyderabad and Visakahapatnam are not exempt and encroachment upto 100 metres of Government land is permitted free of cost irrespective of whether the occupant is poor or rich. It does not even matter as to whether such an encroacher already owns a house or land of his own and he is straightaway entitled to regularization of his encroachment over 100 metres of Government land free of cost. It is indeed unfortunate that the permanent executive of the State does not prevail over the political executive of the day when such policies are formulated to the detriment of the honest citizen and the exchequer. Law abiding denizens cannot be exploited and victimized by the Government of the day by offering such sops to those who commit illegalities so as to form its political base.

In the case on hand, it is clear from the order dated 06.08.2016 passed by the Tahsildar, Bheemunipatnam Mandal, that it was he who advised Byredla Chinna to opt for regularization of her illegal occupation over Government land. She herself did not happen upon this idea. Be it also noted that Byredla Chinna, apart from being a propertied lady is also a political leader, being a Sarpanch. As to whether such regularization policy should be allowed to be exploited by haves as opposed to have-nots, obviously did not arrest the attention of the Government. Further, whether such regularization policy could be extended to the political class also did not weigh with the Government. This Court therefore has no hesitation in holding that the regularization policy floated by the Government is wholly retrograde, illegal and unconscionable. However, as the said policy is not subjected to challenge in these cases, this Court must necessarily stop short of declaring it so. It can only be hoped that the Government would take note of the observations of this Court and take remedial measures at the earliest.

Be that as it may.

Now, a look at the statutory scheme. Chapter XII of the Act of 1955 deals with 'Building Regulations'. Section 452, falling under the heading 'Inspection', reads as under:

> '452. Proceedings to be taken in respect of building or work commenced contrary to Act or bye-laws:— (1) If the erection of any building or the execution of any such work as is described in Section 433 is commenced or carried out contrary to the provisions of this Act or bye-laws made thereunder, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 456 shall:
>
> (a) by written notice, require the person who is erecting or re-erecting such building or executing such work or has erected or re-erected such building or executed such work, on or before such day as shall be specified in such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down, or
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> (b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally or by an agent duly authorised by him in that behalf, to show sufficient cause why such building or work shall not be removed, altered or pulled down.
>
> (2) If such person shall fail to show sufficient cause as required under Clause (a) or (b) of sub-section (1), to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person.'

Section 636, on the other hand, falls in Chapter XIX dealing with 'Procedure' and falls under the head 'Unauthorised Works'. It reads as under:

> '636. Work or thing done without written permission of the Commissioner to be deemed unauthorised:— (1) If any work or thing requiring the written permission of the Commissioner under any provisions of this Act, or any rule, regulation or bye-law is done by any person without obtaining such written permission or, if such written permission is subsequently suspended or revoked for any reason by the Commissioner, such work or thing shall be deemed to be unauthorised and subject to any other provision of this Act the Commissioner may at any time, by written notice, require that the

same shall be removed, pulled down or undone as the case may be, by the person so carrying out or doing if the person carrying out such work or doing such thing is not the owner at the time of such notice then the owner at the time of giving such notice shall be liable for carrying out the requisitions of the Commissioner.

(2) If within the period specified in the written notice the requisitions contained therein are not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing and the expenses thereof shall be paid by such person or owner as the case may be.'

The scheme and structure of the aforestated provisions have to be understood in clear terms before proceeding with the case on hand. Section 452 speaks of erection of any building or execution of any work, notice of which has to be given to the Commissioner before its commencement or carrying out under Section 433, being made contrary to the provisions of the Act of 1955 or the bye-laws made thereunder. If the Commissioner deems it necessary to take proceedings in respect of such building or work in a manner other than that prescribed under Section 456, he is required to give a written notice to the person, who is erecting or re-erecting such building or executing such work, to show sufficient cause as to why such building or work should not be removed, altered or pulled down or require the said person to attend personally to show sufficient cause, either by a statement in writing subscribed by him or through an agent duly authorised by him in that behalf, as to why such building or work should not be removed or altered or pulled down. Sub-section (2) makes it clear that in the event such person fails to show sufficient cause to the satisfaction of the Commissioner, the Commissioner may remove, alter or pull down the building or work and collect the expenses thereof from the said person.

Section 636, on the other hand, deals with what is clearly unauthorised work, undertaken without obtaining requisite written permission or after such permission is suspended or revoked and the

provision deems such work or thing to be unauthorised and in such a case, the Commissioner is empowered to require that such work should be removed by way of a written notice. Sub-section (2) thereof makes it clear that if within the period specified in such written notice, the requisition therein is not carried out by the person or owner, as the case may be, the Commissioner may remove or alter such work or undo such thing.

Coming to the case on hand, it is clear that Byredla Chinna, though she was an unwitting victim having innocently purchased what she assumed to be patta land from Pampana Suryanarayana, is actually in occupation of Government land. Further, it is an admitted fact that she chose to make construction of a G+2 storied structure in the said land without even obtaining sanction from the GVMC. Though the Government's regularization policy speaks of regularization of occupation of Government lands up to 500 square metres, which have been used for dwelling units, none of the G.Os. speak of such dwelling units having been constructed legally or otherwise. Needless to state, when the occupier is not in a position to produce title documents, the municipal authority concerned would not grant sanction or permission to make construction therein. Therefore, by implication, the policy of the Government seems to be not only to reward illegal occupation of Government land but also illegal constructions thereon. However, as already pointed out *supra*, this retrograde policy of the Government is not under challenge in these cases and it is not for this Court to foreclose the pending consideration by the authorities of the representation dated 09.08.2016 made by Byredla Chinna in relation to the subject premises. This Court is informed that though a part of the structure raised by Byredla Chinna had already been demolished, the GVMC authorities did not proceed further thereafter in the light of the pendency of these cases.

It may be noted that Sri M.M.M.Srinivas Rao, learned counsel, filed Memo dated 11.09.2018 in W.P.No.38986 of 2017 stating that Byredla Chinna wished to withdraw the said writ petition due to subsequent events/ developments. However, when an oral submission was made to the same effect by Sri Kowturu Pavan Kumar, learned counsel, during the course of the hearing, Sri S.Lakshminarayana Reddy, learned standing counsel for the GVMC, vehemently opposed such withdrawal stating that W.P.No.396 of 2018 had been filed by Byredla Chinna without even disclosing the fact that she had earlier filed W.P.No.38986 of 2017 and therefore, she could not be permitted to quietly withdraw the same and prosecute W.P.No.396 of 2018. Ms. B.Sapna Reddy, learned counsel representing Sri B.Sudhakar Reddy, learned counsel for G.Rama Surappadu, also argued on the same lines. However, perusal of the affidavit filed in support of W.P.No.396 of 2018 demonstrates that mention was made therein of the filing of W.P.No.38986 of 2017. In any event, this Court is of the opinion that a party cannot be forced to prosecute a litigation which it wants to withdraw. On that ground and as the other writ petition, W.P.No.396 of 2018, is pending adjudication, Byredla Chinna is permitted to withdraw W.P.No.38986 of 2017 subject to the rider that the pleadings therein will be taken into consideration in the course of adjudicating W.P.No.396 of 2018.

Given the totality of the circumstances, this Court is of the opinion that Byredla Chinna cannot be permitted to occupy or enjoy the subject premises pending consideration of her regularization application, keeping in mind the observations made in this order. However, as the policy of the Government permits regularization of illegal occupation of Government land for dwelling units which, by implication are also equally illegal, the GVMC authorities shall not proceed with further demolition of the unauthorized

constructions made by Byredla Chinna until disposal of her regularization application. As it is not open to the State to not only propagate such policies but also perpetuate them by sleeping over the matter till the next such policy or extension of the existing one is put in place, there shall be a direction to the State of Andhra Pradesh to forthwith consider the regularization application of Byredla Chinna duly taking into account the observations made hereinbefore and pass appropriate orders thereon expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order.

The facts brought on record demonstrate that the GVMC authorities were not somnolent in dealing with the representation of G.Rama Surappadu or taking necessary action thereon in accordance with law, as directed by this Court in W.P.No.14247 of 2016. No disobedience, much less willful disobedience, can therefore be attributed to them in this regard.

C.C.No.191 of 2017 is accordingly dismissed. W.P.No.38986 of 2017 is dismissed as withdrawn. W.P.No.396 of 2018 is disposed of with the aforestated directions.

In the circumstances, there shall be no order as to costs.

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SANJAY KUMAR, J

28TH DECEMBER, 2018

Note: L.R. copy to be marked
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