

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.8623 of 2014 and 46034 of 2018

COMMON ORDER:

W.P.No.8623 of 2014

This Writ Petition is filed assailing the proceedings of the first respondent in No.BBB.2/690/2013, dated 18.03.2014, canceling the allotment of land to an extent of Acs.3.31 guntas from out of Acs.5.00 allotted to the petitioner, as illegal and arbitrary and consequently to set aside the same.

2. Briefly, the facts of the case are that the then Government of Andhra Pradesh, has evolved a policy, to develop film industry in the erstwhile State of Andhra Pradesh and in pursuance to the same, allotted Acs.50.00 to the Andhra Pradesh State Film Development Corporation vide G.O.Ms.No.1015 Revenue(Q) Department, dated 17.07.1982. Subsequently, vide G.O.Ms.No.1511, Revenue (Q) Department, dated 03.11.1983, part of the land out of Acs.50.00 was resumed by the Government. By virtue of G.O.Ms.No.226, General Administration (I & PR) Department, dated 26.03.1991, the Government of Andhra Pradesh, re-allotted the land to an extent of Acs.35.482 in favour of the Andhra Pradesh State Film Development Corporation for development of infrastructural facilities and for promotion of film industry. The Government, vide G.O.Ms.No.355, General Administration (I & PR) Department, dated 21.08.2001, directed the Managing Director, Andhra Pradesh State Film T.V & Theatre Development Corporation, the 4th

respondent herein, to allot the land to an extent of Acs.5.00 in Jubilee Hills area, S.No.403, Shaikpet Village, Golkonda Taluq, Hyderabad, to the petitioner. In pursuant to the said G.O, the petitioner paid consideration of Rs.1,15,431/- on 21.08.2001 towards the cost of the land and proportionate expenditure incurred by the Corporation for preliminary development of land etc., and the possession was also delivered to the petitioner on 21.08.2001, after receiving consideration and that the petitioner shifted the industry from Chennai to Hyderabad. The allotment made by the Government vide G.O.Ms.No.355, dated 21.08.2001 was upheld by the Hon'ble Supreme Court vide order dated 13.01.2012 in CC No.22362/2011 arising out of W.P.No.7367 of 2011. Without notice to the petitioner, respondents have visited the site and came to a conclusion that petitioner violated the conditions of allotment. Respondent authorities did not even consider the fact that during the shooting hours the vehicles and part of infrastructure will be moving and mobile from one spot to other. That the petitioner is the largest cine equipment company in South and South-East Asia, providing employment to 1500 people, on daily basis. Since the incentives and infrastructure was promised by the State of Andhra Pradesh, the petitioner totally shifted the industry from Chennai to Hyderabad, as such, the respondents cannot cancel the allotment of land.

3. Additional affidavit is filed by the petitioner stating that allotment of land vide G.O.Ms.No.355, dated 21.08.2001 is in exercise of Executive Power of the State under Articles 162 and 298 of the Constitution of India, as such, the 1st respondent has no power to

exercise the executive power. It is stated that the grant is made on payment of consideration amount; that there is no provision for resumption/cancellation of the grant in the enumerated terms and conditions, as such, the respondents could not have cancelled the allotment of land, either in full or in part. It is also stated that no opportunity of hearing was provided to the petitioner by the 1st respondent before passing the impugned order and that since, the impugned order of the 1st respondent is non-statutory in nature, same is liable to be set aside.

4. Counter affidavit is filed by the 5th respondent, the District Collector, Hyderabad on 05.08.2014 stating that with a view to develop film industry at Hyderabad, the then Government of Andhra Pradesh, allotted land to an extent of Acs.5.00 to the petitioner vide G.O.Ms.No.355, dated 21.08.2001 at Rs.8,500/- per acre (concessional rate) for the purpose of establishment of M/s.Anand Cine Services viz., construction of office, godown for equipment, parking and service facilities for generator vehicles. According to him, when the Mandal Revenue Officer, Shaikpet, vide Lr.No.A/3277/2001, dated 28.04.2006 submitted report stating that the petitioner has not utilized the land allotted and kept it vacant, even after lapse of five years, a show-cause notice vide No.I1/3844/2006, dated 13.07.2006 was issued to the petitioner, to which the petitioner submitted reply stating that it has developed the land allotted to it by investing crores of rupees. Basing on the reply, this respondent instructed the Revenue Divisional Officer, Secunderabad, to submit his remarks in the matter vide

Lr.No.II/3844/2006, dated 20.09.2006, who, in turn, submitted report stating that the petitioner has not utilized the land and same is kept vacant, but stated that some vehicles are parked by them on the plain land and small temporary shed was constructed. Thereafter, the matter was reported to the Government/Chief Commissioner of Land Administration, A.P, Hyderabad, 1st respondent herein, by this respondent vide letter No.II/3844/2006, dated 12.06.2007. While so, the Government has taken a policy decision to review utilization of all Government lands allotted to various organizations/departments and brought out uniform guidelines under “New Land Allotment Policy-2012” by issuing G.O.Ms.No.571 Rev. (Assn.I) Department, dated 14.09.2012. In pursuance of the same, High Level Committee i.e., A.P. Land Management Authority (APLMA) under the Chairmanship of the Chief Commissioner of Land Administration, (CCLA) A.P, the 1st respondent, was constituted vide G.O.Ms.No.607, Rev.(Assn.I) Department dated 11.10.2012. It is stated that APLMA is authorized to monitor utilization of Government lands and to take action for “resumption of lands” in case of non-utilization or violation of allotment conditions. In pursuant to directions of the CCLA-the 1st respondent, in a meeting held on 06.06.2013, the R.D.O, Shaikpet, inspected all government lands allotted to various organizations and departments, with reference to utilization of land and submitted report dated 19.06.2013 in respect of the petitioner’s land stating that most of the land allotted to the petitioner is unutilized and vacant on ground, which is in violation of conditions. Therefore, a show-cause notice was issued

to the petitioner vide Notice No.E6/I1/3844/2006, dated 27.06.2013, for which, petitioner submitted reply on 03.07.2013 stating that they are utilizing the land and spent huge amount for development of the land. After examining the explanation, the Tahsildar, Shaikpet, was directed to get a detailed survey with regard to extent of land utilized, extent of land not developed and the extent of land leveled but not utilized. The Tahsildar, Shaikpet, vide Lr.No.E1/1005/2013, dated 05.09.2013 reported that an extent of Acs.1.09 gts is being utilized for parking, godown, office etc., and an extent of Acs.3.31 gts is left un-utilized and the same is vacant on the ground with rock boulders. In view of the explanation offered by the petitioner, a detailed report made by the revenue authority was placed before the APLMA meeting on 04.10.2013 and after perusing the facts, the APLMA resolved to order resumption of Acs.3.31 gts of un-utilized land and authorized the CCLA & Spl. Chief Secretary, to pass necessary resumption orders, in favour of the Government following due process of law and to take appropriate action. The CCLA examined show-cause notice issued by the Collector, Hyderabad, reply given by the petitioner, survey report of the Tahsildar etc., issued another show-cause notice dated 11.12.2013. In response to the same, the petitioner submitted reply, and after considering the same, the 1st respondent passed the impugned order, dated 18.03.2014. It is also stated that the land allotted to the petitioner is on nominal rate of Rs.8,500/- per acre, which is very marginal and concessional market value, but the market value of the subject land was Rs.2,500/- per sq.yard and that since the petitioner failed to put the land into use in full

shape as promised by it, resumption orders were passed after following the due procedure.

5. Denying the averments in the counter affidavit, petitioner filed rejoinder, reiterating the averments in the affidavit filed in support of the Writ Petition, stating that the petitioner utilized the entire land allotted to it by investing crores of rupees; that the Government has not fixed any time for utilization of the said land; that the MRO as well as the RDO, without visiting the property personally, submitted false reports stating that the petitioner is not utilizing the whole property. It is stated that the land was never kept vacant for the last fourteen years, as alleged by the respondents, and that the government passed impugned orders, without affording an opportunity of hearing, which is in violation of principles of natural justice.

6. Heard learned counsel for the petitioner and learned Government Pleader for Revenue, who made submissions basing on the pleadings, and perused the record.

7. Learned counsel for the petitioner, while reiterating the averments in the affidavit filed in support of the Writ Petition as well as rejoinder, submits that though, the petitioner was allotted land in the year 2001 vide G.O.Ms.No.355, dated 21.08.2001, WP No.6404 of 2004, was filed challenging allotment of land to the petitioner, which was dismissed on 06.07.2004 by a Division Bench of this Court. He submits that another WP No.7367 of 2001 was filed challenging allotment of land to the petitioner, which was also dismissed on 06.04.2011 by a Division Bench

of this Court. Aggrieved thereby, SLP (Civil) No.22362/2011 filed before the Hon'ble Supreme Court, was also dismissed by judgment dated 13.01.2012; that WP No.28755 of 2008, which is also filed challenging the allotment of land to the petitioner, is still pending before this Court. He also submits that though the land was allotted, on payment of consideration, vide G.O.Ms.No.355, dated 21.08.2001, Government issued letter No.8493/I&PR/2002-1, dated 21.02.2002 to stop further action on the G.O.Ms.No.355, dated 21.08.2001, until further orders, and that after reviewing the same, the Government issued G.O.Ms.No.744, General Administration (I&PR) Department, dated 26.12.2008, in principle, ratifying the allotment of land made to the petitioner vide G.O.Ms.No.355, dated 21.08.2001, but the respondents stated that issuing show-cause notice from the year 2006 onwards, when the litigation is pending and allotment is kept in abeyance. He also submits that reports obtained after issuance of show-cause notice, which is basis for cancellation of allotment, as such, the impugned order is liable to be set aside.

8. On the other hand, learned Government Pleader for Revenue submits that the petitioner was allotted land for the purpose of construction of office, godown for equipment, parking and service facilities for generator vehicles. He submits that as the petitioner failed to utilize the same for the purpose, for which it was allotted, is in violation of conditions of allotment, as such, three show-cause notices were issued and basing on the explanations offered by the petitioner, reports were called for, regarding ground realities and action was

initiated for resumption of land, as such, no exception can be taken. He further submits that since the petitioner failed to utilize the land for the purpose intended, it cannot have any right, to have the allotment to continue in its favour. He further submits that the respondents never interfered with the extent of land utilized by the petitioner i.e., Acs.1.09 guntas where the allotment was not cancelled and remaining extent of land i.e., Acs.3.31 guntas, consists of boulders, was fenced, which goes to show that the petitioner has not utilized the land for the purpose for which it was allotted. He submits that the Government also defended the allotment when the same was challenged, but that does not mean that the said allotment cannot be cancelled for violation of conditions of allotment.

9. In view of rival contentions of both parties, the issue that arises for consideration is whether the allotment of land made to the petitioner is liable to be cancelled on the ground of non utilization of the same or not?

10. A perusal of the show-cause notice dated 11.12.2013 issued to the petitioner and impugned order, goes to show that it was issued basing on the reports submitted by the Tahsildar as well as Revenue Divisional Officer. That apart, the impugned order goes to show that no notice was issued to the petitioner, before obtaining reports from the concerned revenue authorities, and though the petitioner sought for an opportunity of hearing, vide his explanation dated 03.01.2014, the same was not granted, which is nothing but violation of principles of natural justice. The assertion of the petitioner is that the so-called reports are after

issuing show-cause notice and filing explanation by the petitioner and that the same are behind the back of the petitioner, but the same is not disputed by the respondents, in their counter affidavit, which is also violation of principles of natural justice.

11. A perusal of G.O.Ms.No.744, General Administration (I&PR) Department, dated 26.12.2008 goes to show that the Government issued letter No.8493/I&PR/2002-1, dated 21.02.2002, directing the Managing Director, A.P.State Film T.V & Theatre Development Corporation Limited, to stop further action on allotment of land to petitioner vide G.O.Ms.No.355, dated 21.08.2001, until further orders and after reviewing its decision, ratified the G.O.Ms.No.355, dated 21.08.2001 and withdrawn the aforesaid letter. A perusal of G.O.Ms.No.744, dated 26.12.2008 further goes to show that the Managing Director, A.P State Film T.V & theatre Development Corporation Ltd., the 4th respondent herein, was directed to hand over the land, land conversion from HUDA etc, and register the deed of conveyance covering an extent of Acs.5.00 of land in Sy.No.403, Shaikpet Village, Golkonda Taluq, Hyderabad in favour of the petitioner, on the same terms and conditions, as was done, in the case of Padmalaya Studios, but the same was not done. In the said G.O, it is stated as follows:

“M/s.Anand Cine Service are also hereby permitted to develop facilities to promote Film and T.V Industry, such as establishing film processing laboratory, Studios Floors along with make up rooms, Recording Theatres, Dubbing Theatres, Editing rooms, Graphics and Animation Studios & T.V. serials, preview theatres, Satellite up linking facilities, staying and resting facilities for Films and T.V industry employees, Artists and technicians etc., and also to provide facilities for

production companies coming from all over India and abroad or foreign collaboration productions connected to films, T.V and animation Software industry etc.,”

It is not known as to how the authorities have issued show-cause notice in the year 2006 alleging violation of the conditions of allotment by the petitioner, when the allotment dated 21.08.2001 itself is kept in abeyance vide letter No.8493/I&PR/2002-1, dated 21.02.2002, which was withdrawn vide G.O.Ms.No.744, dated 26.12.2008. Even in explanations given to the show-cause notices issued in the year 2006 and 2013, it is the specific contention of the petitioner that they have not violated conditions of allotment, are fighting the litigation, apart from investing huge amounts for developing the land, alleging violation of principles of natural justice.

12. Admittedly, petitioner was allotted land to an extent of Acs.5.00 vide G.O.Ms.No.355, dated 21.08.2001 by the Government. The fact of filing of several writ petitions, challenging the allotment of land in favour of the petitioner, and their dismissals, is not in dispute and same is observed in impugned order. A perusal of the material papers goes to show that the petitioner was fighting the litigation for the allotment of land till 2012, which is evident from the fact that the Hon'ble Supreme Court dismissed CCNo.22362/2011, by order dated 13.01.2012, arising out of dismissal of WP No.7367 of 2011, which was filed challenging the allotment of land to the petitioner. W.P.No.28755 of 2008 filed challenging the allotment, is still pending. The petitioner defended the

said case before the Hon'ble Supreme Court, to protect the allotment of land in its favour.

13. It is also asserted that the allotment of land to the petitioner is on payment of market value, but the respondents pleaded the land was allotted at concessional rate. Admittedly, when the allotment is made on payment of market value and when petitioner paid the same and when there is no default clause and no time limit is fixed for complying the condition, therefore, it cannot be said that the petitioner has violated the terms and conditions of allotment entailing cancellation of allotment.

14. It is further stated in the explanation that a case MCC/491/2004 was also filed by one V.Laxmamma and others, against petitioner, in order to grab the subject property, allotted to the petitioner under G.O.Ms.No.355, but the same was dismissed by the Executive Magistrate on 21.08.2004. All these facts were not disputed by the respondents, in their counter affidavit. In fact, the impugned order states that the petitioner filed elaborate explanation on 03.01.2014, but except extracting part of explanation, the same is not considered in proper perspective, which goes to show that the respondents have not applied their mind in considering the explanation offered by the petitioner, which is in violation of principles of natural justice. Though the basis for initiating action against the petitioner by the Government is evolving a new policy, i.e., New Land Allotment Policy in the year 2012, by issuing G.O.Ms.No.571, Rev.(Assn.I) Department, dated 14.09.2012, but, admittedly, the same is subsequent to the allotment of land to the petitioner. More over, as already discussed supra, the show-cause notice

was issued to the petitioner for violation of BSO 24, but there is no whisper about the alleged violation of BSO 24 in the impugned order, dated 18.03.2014, passed by the 1st respondent. A Division Bench of this Court while dealing with the provisions of the A.P.Assigned Lands (Prohibition of Transfer) Act, 1977 in the judgment reported in **Letter sent from Plot No.338, Parvant Nagar, Hyderabad v. The Collector & District Magistrate, R.R.District**¹, held as follows:

“50.We are of the view that provisions of Act No.9 of 1977 will not be applicable to the cases where assignments were made on collection of market value or under Circular 14 except it were granted to the landless poor persons free of market value. Point No.2 is answered accordingly.”

Though it is the plea of the petitioner that the impugned action of cancellation is not based upon any statute or Rule, but in this case, the allotment is for a specific purpose, petitioner has to abide by the same.

For the aforesaid reasons, the impugned order passed by the 1st respondent vide Proceedings No.BBB.2/690/2013, dated 18.03.2014 is liable to be set aside and accordingly set aside. Since the allotment was made on certain conditions, and subject allotment was kept in abeyance till G.O.Ms.No.744, dated 26.12.2008, and as no conveyance deed is executed till date as per said G.O and no time limit is fixed for comply conditions, and litigation in respect of allotment ended in the Hon’ble Supreme Court in the year 2012,the respondents are directed to execute deed of conveyance as directed in GO.Ms.No.744, dated 26.12.2008 and grant sufficient time for fulfilling conditions in the order of allotment,

¹ 2008 (4) A.P.L.J (HC)

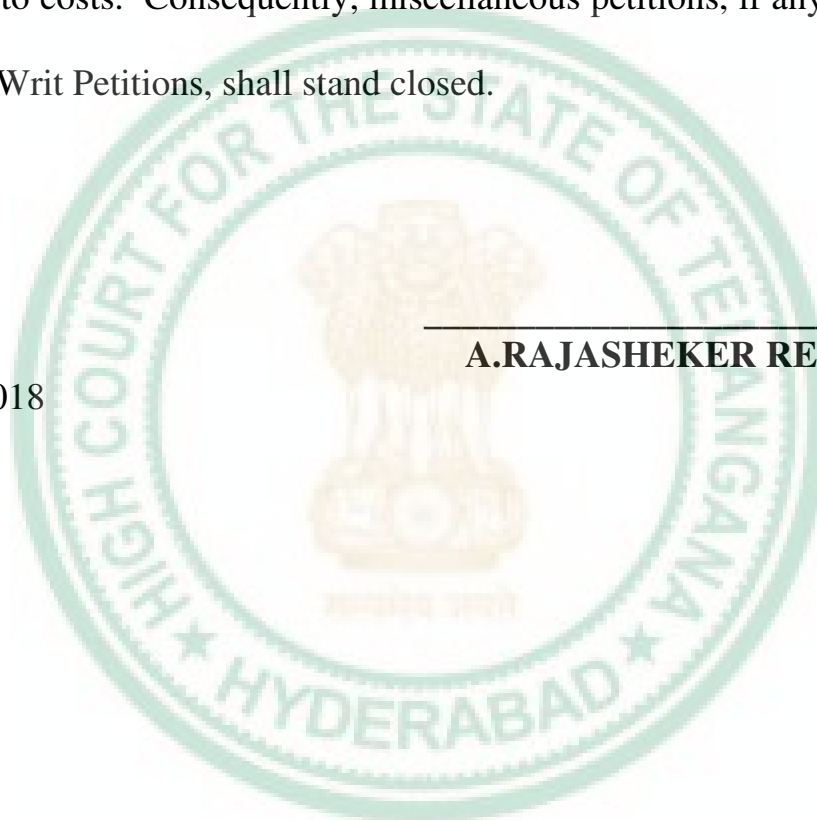
and if the same are not complied within the time stipulated, it is open for the respondents to take action, in accordance with law.

In view of orders in WP No.8623 of 2014, no further orders are required to be passed in Writ Petition No.46034 of 2018, as it is stated that the respondents are not interfering with balance of allotment of land.

Accordingly, Writ Petition No.8623 of 2014 is allowed and W.P.No.46034 of 2018 is dismissed as infructuous. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in these Writ Petitions, shall stand closed.

A.RAJASHEKER REDDY, J

03-06-2018
kvs



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.8623 of 2014 & 46034 of 2018



Date: 03.06.2019

kvs