

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Appeal Nos.427 and 431 of 2016

Date : 19.02.2020

Between:

W.A.No.427 of 2016

The National Textile Corporation Ltd.,
& another

...Appellants

And

Modified voluntary Retirement Scheme of 2002 of
Azam Jahi Mill Workers Association
& others

...Respondents

W.A.No.431 of 2016

The Kakatiya Urban Development Authority,
Warangal,m Rep. by its Vice Chairman

...Appellant

And

Modified voluntary Retirement Scheme of 2002 of
Azam Jahi Mill Workers Association
& others

...Respondents

Standing Counsel for the appellants : Sri P.Kamalakar,

Sri G.Vidyasagar,
learned senior counsel
for Mr.M.Ajay Kumar.

Counsel for the respondent No.1 : Mr.Prabhakar Chikkudu
for R.1

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Both the writ appeals are disposed of by this common judgment as both the appeals pertain to the same order of a learned Single Judge passed in W.P.No.26642 of 2007, dated 18.03.2016, whereby the learned Single Judge has allowed the writ petition filed by the first respondent herein, and directed the writ appellants to allot house sites of 200 sq.yards each to all the eligible 332 members of the first respondent-Association on par with the 134 ex-employees of the writ appellant-Mill, who were already allotted house sites of 200 sq.yards each as per G.O.Ms.No.463, Municipal Administration and Urban Development (H2) Department, dated 27.06.2007.

2. Hereinafter, the parties are referred to as they were arrayed in the writ petition.

3. Writ Appeal No.427 of 2016 is filed by the first and fourth respondents in the writ petition i.e. The National Textile Corporation Ltd. and Azam Jahi Mills respectively, and Writ Appeal No.431 of 2016 is filed by the third respondent in the writ petition i.e. Kakatiya Urban Development Authority.

4. The brief facts of the case are that the writ petitioner is an Association called Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mills Workers Association, which comprises of 452 members. The said Association consists of former employees of the first respondent-Corporation. According to the petitioner Association, the fourth respondent was a Textile Mill and all the members of the petitioner-Association have worked in the said Mill

for more than twenty years. While they were in employment, they were allotted quarters to stay, which were owned and constructed by the first respondent-Corporation. In the year 1986, the employees of the first respondent-Corporation working in the fourth respondent-Mill were asked to vacate the quarters ostensibly on the ground that the quarters were in dilapidated condition and posed a risk to the life and limb to the persons staying therein. Pursuant to the notice given by the first respondent-Corporation to vacate the quarters, the members of the petitioner-Association have vacated the quarters. Thereafter, due to mismanagement, the Mill was closed in the year 2002. That after the quarters were vacated by the members of the petitioner-Association, they were demolished by the fourth respondent-Mill. However, some employees numbering about 134 stayed back in the quarters and did not vacate the quarter even after service of notice by the Management to vacate the quarters. These employees, numbering 134, continued to stay even after the closure of the Mill. Thereafter, all the employees numbering about 452 took retirement under the 'Modified Voluntary Retirement Scheme' and the first respondent-Corporation sold away the entire machinery and infrastructure along with land to an extent of Acs.202 to the second and third respondents. When the matters were pending, the third respondent herein has submitted a proposal to the Government to allot 200 sq. yards of land, free of cost, to each of the 134 employees of the fourth respondent-Mill, who were staying in the quarters without vacating them, and the same was approved by the Government vide G.O.Ms.No.463, Municipal Administration and Urban Development (H2) Department, dated 27.06.2007.

Thereafter, the members of the petitioner-Association also submitted a representation to the official respondents to allot 200 sq.yards of land to each of its members on par with the 134 employees of the erstwhile Azam Jahi Mill, but the same was not considered. Therefore, left with no other alternative, the petitioner-Association filed W.P.No.26642 of 2006. Vide judgment, dated 18.03.2016, the learned Single Judge passed an order in favour of the petitioner Association directing the official respondents to allot 200 sq. yards of land each to the eligible members of the petitioner Association numbering 332, on par with the 134 ex-employees, who were already allotted land to an extent of 200 sq.yards each. Aggrieved by the above said direction, the first respondent-Corporation as well as the fourth respondent-Mill have preferred Writ Appeal No.427 of 2016 while the Kakatiya Urban Development Authority (in short 'KUDA'), which was arrayed as third respondent in the writ petition, has preferred Writ Appeal No.431 of 2016 before this Court.

5. One of the main contentions raised by the learned counsel for the appellants is that the judgment of the learned Single Judge is not only erroneous, but also the same is contrary to the well established principles of law and the facts of the present case. The learned counsel for the appellants has strenuously argued that the order of the learned Single Judge is without any legal basis; direction to allot 200 sq.yards of land to each member of the petitioner-Association cannot be sustained in view of the fact that a Writ of Mandamus cannot be issued directly to allot land to the petitioner-Association, more particularly in view of the fact that the land in question is a private land and not a government land.

Moreover, KUDA is an independent Organization, which on the basis of the specified circumstances had to allot land to 134 employees, and the members of the petitioner-Association cannot be equated with the said 134 employees. The benefit which had been given to 134 employees cannot be made a precedent to allot land to the other employees. The members of the petitioner-Association having voluntarily vacated the quarters, and taken the 'modified voluntary retirement scheme' cannot turn around after a lapse of more than fifteen years, and seek entitlement of any land on par with the other 134 former employees. Admittedly, the land is a private land, which now belongs to the third respondent, KUDA, and as such no Mandamus can be issued to allot the land to the members of the petitioner-Association. Thus, the learned Single Judge erred in equating the employees who were already retired and taken voluntary retirement with the other 134 ex-employees. It is further contended that the Corporation had taken a policy decision to allot 200 sq.yards of land to 134 employees to avoid litigation and to get them vacated, the Corporation instead of filing Eviction cases against the employees, who did not vacate the quarters, and incur huge legal expenses, decided to allot 200 sq.yards of land each to avoid delay and costs. The members of the petitioner-Association, who voluntarily vacated the quarters in the year 1986, cannot come back after a lapse of more than fifteen years, and claim that they should also be allotted land on par with the other 134 employees.

6. Per contra, the learned counsel for the petitioner-Association has vehemently argued and supported the order passed by the learned Single Judge. The learned Counsel has contended that the

Corporation or KUDA cannot differentiate between the same employees who were working in the fourth respondent-Mill. The members of the petitioner-Association, who have abided by the notice issued by the first respondent-Corporation, cannot be punished for obeying the same by denying them plots, and the persons who did not vacate the quarters cannot be awarded by the very same first respondent-Corporation by allotting 200 sq.yards of land.

7. Heard Sri P. Kamalakar, the learned Counsel for the appellant in W.A.No.427 of 2016, Sri G.Vidyasagar, the learned Senior Counsel appearing for Sri M.Ajay Kumar, the learned Standing Counsel for the appellant in W.A.No.431 of 2016, and Sri Prabhakar Chikkudu, the learned Counsel for the first respondent in both the appeals.

8. Having gone through the order of the learned Single Judge and perused the record, it is seen that the learned Single Judge while allowing the writ petition has taken into consideration the fact that in the year 1986 the members of the writ petitioner-Association had voluntarily vacated the quarters which were allotted to them, and after the closure of the Mill in the year 2002, they had opted 'voluntary retirement scheme' and subsequently the 'Modified retirement scheme'. The other employees numbering about 134 have also taken retirement under the very same scheme, but they did not choose to vacate the premises. Subsequently, the respondent-KUDA had taken a decision to allot 200 sq.yards of land each to the said 134 former employees of the Mill, free of cost. The members of the petitioner-Association being

law abiding citizens have voluntarily vacated the quarters pursuant to the notice issued to them, whereas the 134 ex-employees, who did not vacate the quarters allotted to them, have been awarded by the KUDA by allotting 200 sq.yards of land each, free of cost. The first respondent-Corporation and fourth respondent-Mill were having land to an extent of Acs.215-00, out of which, land to an extent of Acs.201.20 was sold to various respondents. Hence, they were still having the left over area of Acs.10.24 guntas in survey Nos.62, 63, 65, 66, 67, 76 of Laxmipuram (V) of Warangal District, and in survey Nos.368, 370, 377 situated at Khila Warangal (V) of Warangal District. Thus, the total available land still held by the first and third respondents is Acs.14.88 guntas. The learned Single Judge further held that the non-allotment of the housing plot to the eligible members of the writ petitioner-Association on par with the other 134 former employees who were similarly placed as that of the members of the writ petitioner-Association amounted to differential treatment. Therefore, it was in violation of Article 14 of the Constitution of India. Thus, while allowing the writ petition a direction was issued to the respondents to allot house sites to an extent of 200 sq.yards each to all the eligible (332) members.

9. A bare perusal of the impugned order, on the face of it, would reveal that though all the employees of the single Organization i.e. the fourth respondent-Mill had opted the very same Voluntary Retirement Scheme, and given the very same benefits, the persons who had not vacated the quarters allotted them were awarded land to an extent of 200 sq.yards each, free of cost, by the third respondent-KUDA, which appears to be unjust.

But a deeper probe would reveal that the learned Single Judge had lost sight of the fact that no Mandamus can be issued to the third respondent-KUDA to allot 200 sq.yards of land to 332 eligible members of the petitioner-Association on par with the other 134 employees on the simple premise that the lands in question are the private patta lands owned by the third respondent-KUDA. After the fourth respondent-Mill had become sick, it was shut down, and land to an extent of Acs.65.65 was sold to A.P. Housing Board and another extent of Acs.117.20 guntas was sold to KUDA on 01.03.2007. In fact, after the public auction, the first and fourth respondents did not own any land. Hence, no direction could be given to the said respondents to allot land to the members of the petitioner-Association. As the 134 ex-employees continued in the quarters *in spite* of the notice asking them to vacate, they continued to stay in the said quarters, and third respondent took a decision to allot the land to an extent of 200 sq.yards each only to avoid courts and time to fight litigation. The proposal to allot land to 134 ex-employees of the fourth respondent-Mill was taken by third respondent-KUDA and not by the first or fourth respondents. The reason given for taking such a decision was that they did not want to incur the huge legal expenditure and time for getting those 134 people vacated from the quarters which they were occupying; accordingly, they submitted a proposal to the Government, which approved the same.

10. Further, the first respondent and the fourth respondent are Central Government Organizations, the second respondent is the State of Telangana, represented by its Principal Secretary, and the third respondent is KUDA a State Government Organization. It is

nobody's case that the employees of the first respondent-Corporation have anything to do with the third respondent-KUDA. The third respondent-KUDA has taken a call to see that there is no long-pending litigation and to avoid the huge legal expenditure, had allotted 200 sq.yards of land each to the former employees of the fourth respondent-Mill who were in the occupation of the quarters, which have been already sold to them (KUDA) in the public auction and the same cannot be faulted with. It is incomprehensible as to how the allotment made by the third respondent-KUDA can be made applicable to the employees of the first respondent-Corporation which is no longer the owner of the land. The call taken by the third respondent-KUDA to allot 200 sq.yards of land each is a call taken to safeguard their commercial interest, to avoid cost of litigation and the time spent in fighting the cases. The said decision cannot become a precedent for the writ petitioner-Association to seek similar relief. It is well accepted principle of law that Mandamus can only be issued for enforcement of the Fundamental Right enshrined in the Constitution of India and cannot be issued to allot land to a particular person or association more particularly when the land is a private land belonging to the third respondent-KUDA.

11. For the abovementioned reasons, the order of the learned Single Judge, dated 18.03.2016, passed in W.P.No.26642 of 2007 is set aside. Both the writ appeals are allowed accordingly. However, in the interest of justice, we deem it appropriate to state that in case the members of the writ petitioner-Association make any representation to the first respondent-Corporation to allot the balance area, which is left out after the auctioned land is

culled out, the first respondent-Corporation is free to consider the same on sympathetic grounds.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

19th February, 2020
smr / sur

Note : Issue C.C. today
B/o.
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