

HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.A.No.425 of 2021

JUDGMENT: *(Per Hon'ble Sri Justice Abhinand Kumar Shavili)*

This Writ Appeal is filed aggrieved by the orders passed by the learned Single Judge in W.P.No.3502 of 2009 dt.05-07-2021.

2. Heard Sri A.Sudarshan Reddy, learned Senior Counsel for the appellant-University, learned Government Pleader for Revenue appearing for respondent Nos.1 to 4, Sri Vivek Jain, learned counsel for 5th respondent, Sri Ravindra Shrivastava, learned Senior Counsel appearing for Sri R.Sushanth Reddy, learned counsel for respondent Nos.6 to 13.

3. It has been contended by the appellant University that it was established by the Parliament under Article 371 (d) (e) of the Constitution of India and the State was pleased to allot 2300 acres of land in favour of the appellant University at Kancha Gachibowli with the

condition that the land should be used only for the purpose of education and technology and if the land is not to be used for any other purpose, without obtaining permission from the State government, the land will be reverted back to the State Government. The appellant University had further contended that after the State Government has allotted 2300 acres in its favour, it has established a Central University which is called as University of Hyderabad and constructed a compound wall and at present, the appellant University is imparting education in various courses to the students.

4. Learned counsel for the appellant University had further contended that the appellant University is one of the reputed universities in the country. He had further contended that one Sri S.Lingamaiah had filed O.S.No.193 of 1982 on the file of the Additional District Judge, Ranga Reddy District, against the appellant University and also the State of Andhra Pradesh seeking possession of land admeasuring Ac.25.16 gts in Sy. Nos.14 and 16 to 23 situated at Kancha Gachibowli, Serilingampally Mandal,

Ranga Reddy District as he was claiming ownership of the said land. Learned counsel for the appellant University had further contended that the said suit was decreed in favour of Lingamaiah on 19-02-1994. Thereafter, the appellant University has preferred First Appeal i.e. A.S.No.1034 of 1994 before this Court and during pendency of the First Appeal, Lingamaiah had expired and his legal representatives were brought on record and finally, the First Appeal was dismissed vide judgement dt.17-11-2001. Thereafter, the legal heirs of Lingamaiah have filed E.P.No.11 of 2002 for execution of judgment and decree dt.19-02-1994 in O.S.No.193 of 1982 and in pursuance of the orders passed in E.P., the land admeasuring Ac.25.16 gts in Sy. Nos.14, 16 to 23 was delivered to the legal heirs of Lingaiah on 31-01-2003. But the said land had no approach road. Ultimately the appellant University had conceded the request of the legal heirs of Lingamaiah for providing alternative main land keeping in view the impending security problems which may arise due to entry of the strangers into the appellant University and the Executive Council on 24-12-2003, resolved to provide

alternative land admeasuring 12.17 gts situated in between IIIT and Sports village in lieu of Ac.25.16 gts and the said proposal was sent for approval to the Government through proper channel. The District Collector who inturn forwarded the same to the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, vide letter dt.08-03-2004 and thereafter, on 11-04-2005, the District Collector has forwarded a letter issued by the Chief Commissioner of Land Administration raising certain quarries to the appellant University, to which the appellant University submitted its reply emphasizing the need for according sanction for exchange of land. However, the proposal of the appellant University was rejected by the State Government vide Memo dt.20-12-2005. Later, W.P.No.27316 of 2005 was filed before this Court by the land owners seeking implementation of the proposal of exchange of land and the said Writ Petition was disposed of by this Court on 30-12-2005 with the following observation:

“The learned Standing Counsel for the respondent has placed before the Court the copy of the letter, dated

20-12-2005, addressed by the Special Chief Secretary to Government, through which, the proposal submitted by the respondent was rejected. In that view of the matter, no directions can be issued in this regard. If the petitioners have any problems in the matter of enjoying the land in question, they have to work out their remedies in the Civil Court.”

5. The counsel for the appellant had contended that the land owners have submitted yet another representation on 30-01-2006 expressing their inclination to accept the land in two different locations. Learned counsel for the appellant University had further contended that the 1st respondent had issued the impugned G.O. directing the District Collector to resume the land to an extent of Ac.25.31 gts. in Sy. No.37 from the appellant University and handover the same to the land owners, ignoring the fact that on an earlier occasion, the land owners have agreed for exchange of land admeasuring Ac.12.17 gts in lieu of Ac.25.16 gts. The State Government has no authority to issue G.O.Ms.No.1473 dt.10-12-2018 to resume the land of the appellant University and handover to the unofficial respondents without the consent of the appellant University.

6. Learned counsel for the appellant University had further contended that originally, Lingamaiah has filed O.S.No.193 of 1982 against the appellant University as well as the State Government and when the suit preferred by Lingamaiah was dismissed against the State, the State ought not to have allotted Ac.25.31 gts in Sy. No.37, in favour of the unofficial respondents. Challenging the action of the State Government in issuing G.O.Ms.No.1493, the appellant University has filed W.P.No.3502 of 2009 before this Court.

7. Learned counsel for the appellant had further contended that in the said Writ Petition at the time of admission, this Court was pleased to grant interim order on 20-02-2009 staying all further proceedings pursuant to G.O.Ms.No.1473 dt.10-12-2008 and the learned counsel for the appellant had contended that the State Government ought not to have issued the said G.O. in favour of unofficial respondents, more so, when the suit preferred by Lingamaiah was dismissed in respect of the State Government.

8. Learned counsel for the appellant had further contended that the learned Single Judge without appreciating any of the contentions raised by the appellant University had mechanically dismissed the Writ Petition. Aggrieved by the same, the present Writ Appeal is filed. Learned counsel for the appellant had further contended that when the unofficial respondents have agreed for exchange of Ac.12.17 gts in lieu of their original claim of Ac.25.16 gts, the State Government ought not to have issued G.O.Ms.No.1473, more so, when the State Government has allotted 2300 acres of land in favour of the appellant University and the State Government is no more the ownership of the said extent of land so as to enable them to pass an order of exchanging the land of University in favour of unofficial respondents. Therefore, appropriate orders be passed in the Writ Appeals setting aside the order of the learned Single Judge in W.P.No.3502 of 2009 dt.05-07-2021.

9. Sri Ravindra Srivatsava, learned Senior Counsel, appearing for the respondent Nos.6 to 13, had

contended that the suit preferred by Lingamaiah O.S.No.193 of 1982 was decreed against the appellant University vide orders dt.19-02-1994 and the appellant University itself has passed resolution on 24-12-2003 for allotment of alternative land to an extent of Ac.12.17 gts in favour of the unofficial respondents in order to honour the decree passed by the competent Civil Court in O.S.No.193 of 1982 dt.19-02-1994 and subsequently the appellant University vide letter dt.27-02-2006 had in principle agreed for exchange of land to an extent of Ac.21.00 gts in Sy. No.37 of Gopannapally village in lieu of Ac.25.31 gts situated in Sy. No.14 and 16 to 23 of Kancha Gachibouli and in pursuance of the request made by the appellant University only, and in order to honour the decree passed by the competent Civil Court in O.S.No.193 of 1982 dt.19-02-1994, the State Government has rightly issued the said G.O. and the interim orders granted by this Court on 20-02-2009 staying of all further proceedings in pursuance to the said G.O.Ms.No.1473 dt.10-12-2008 were modified when vacate stay application filed on

02-09-2009 and the said interim orders were modified in the following manner:

“The impugned G.O. is proposing to exchange only Ac.4.31 gts of land in excess of the proposals made by the University. Thus, it is made clear that the stay order granted is only to an extent of Ac.4.31 gts and the University is at liberty to hand over the land of Ac.21.00 gts as per the said G.O. in respect of the remaining land of Ac.4.31 gts in Sy. No.37, the University shall maintain status quo as of today.”

10. Learned Senior Counsel for the unofficial respondents had further contended that in pursuance to the modification of interim orders, the State has also executed exchange deeds in favour of unofficial respondents to an extent of Ac.21.00 gts on 14-04-2014 and unofficial respondents have already constructed buildings in pursuance to the exchange deeds executed by the State Government in favour of unofficial respondents. The issue in the present Writ Appeal revolves only to an extent of Ac.4.31 gts. Admittedly, the suit which was decreed against the appellant University was to an extent of Ac.25.16 gts and the State Government in order to ensure that entire extent of land covered under decree in

O.S.No.193 of 1982 dt.19-02-1994 be honoured and the State has rightly issued G.O.Ms.No.1473 in favour of the unofficial respondents. Therefore, there are no merits in the Writ Appeal and the same is liable to be dismissed.

11. This Court having considered the rival submissions of the parties is of the considered view that the State Government has handed over 2300 acres of land to the appellant University. Admittedly, no document could be shown by the appellant University that it is the owner of the land. Admittedly the State Government has allotted 2300 acres of land in favour of the appellant University way back in 1975 with a condition that the land allotted should be used only for education and technology purpose, and if the land is used for any other purpose, the State Government has reserved right to resume the land from the appellant University and the appellant University had also passed resolutions through its Executive Council on 24-12-2003 to allot alternative land in favour of the unofficial respondents and the said resolution was forwarded to the State Government by taking appropriate

action. Later, for the reasons best known to the appellant University, the appellant University had in principle agreed for exchange of land to an extent of Ac.21.00 gts in Sy. No.37 of Gopannapally village in lieu of Ac.25.16 gts in favour of unofficial respondents as the appellant University has suffered a decree in O.S.No.193 of 1982 dt.19-02-1994 and very strangely, the interim orders which were originally granted on 20-02-2009 by this Court were modified, when vacate stay application was filed, on 02-09-2009 to the following effect:

“The impugned G.O. is proposing to exchange only Ac.4.31 gts of land in excess of the proposals made by the University. Thus, it is made clear that the stay order granted is only to an extent of Ac.4.31 gts and the University is at liberty to hand over the land of Ac.21.00 gts as per the said G.O. in respect of the remaining land of Ac.4.31 gts in Sy. No.37, the University shall maintain status quo as of today.”

and very strangely, the appellant University has not carried matter in appeal challenging the modification of the interim orders and the appellant University has also not carried the matter in appeal to the Apex Court by filing an appeal

against the dismissal of First Appeal i.e. A.S.No.1054 of 2014 dt.17-11-2001. Though the interim orders were modified in the Writ Petition on 02-09-2009, the exchange deeds were executed by the State Government in favour of unofficial respondents on 14-04-2014. Even the exchange deeds, which were executed by the State Government at the instance of appellant University in favour of unofficial respondents, were also not challenged by the appellant University and by virtue of exchange deeds, valuable land to an extent of Ac.21.00 gts have been passed on to the unofficial respondents in the form of exchange deeds that too at the instance of the appellant University. The only issue which remains for adjudication is in respect of Ac.4.16 gts of land. Admittedly, the appellant University has not taken any steps to protect its valuable land. The appellant University ought to have acquired Ac.25.31 gts from its original owner Lingamaiah instead of contesting the suit and having suffered a decree at the hands of Lingamaiah in O.S.No.193 of 1992 dt.19-02-1994 and later, miserably failed in the First Appeal i.e. A.S.No.1054 of 1994 dt.17-11-2001, and the appellant University has

not even carried the matter further in appeal to the Apex Court. Usually this Court would have come to the rescue of University in order to protect its valuable land and this Court is of prima facie opinion that the State Government was not justified in issuing G.O.Ms.No.1473 dt.10-12-2008. More so, when O.S.No.193 of 1992 preferred against the State Government was dismissed, it is appellant University, which has passed resolutions in the Executive Committee agreeing for exchange of land with unofficial respondents and requested the State Government for allotment of alternative land in favour of unofficial respondents in order to honour the decree which was passed by the competent Civil Court in O.S.No.193 of 1982 dt.19-02-1994 and by virtue of modification of interim orders on 02-09-2009 also Ac.21.00 gts of land was already passed on to the unofficial respondents and they have constructed houses.

12. Though the contention of the appellant University contending that the State Government had no power to issue G.O.Ms.No.1473 dt.10-12-2008, more so,

the suit preferred by Lingamaiah was dismissed against the State Government, and the proper course would have been that Lingamaiah and his legal heirs and persons of claiming through Lingamaiah and his legal heirs ought to have filed execution petition before the competent Civil Court seeking execution of the decree is no doubt true and correct. But in the present case, the State Government had issued G.O.Ms.No.1473 dt.10-12-2008 at the instance of appellant University and the appellant University had passed resolutions in an Executive Committee agreeing in principle for allotment of alternative land in favour of decree holders and during the pendency of Writ Petition, with the modification of interim orders, a large extent of land i.e. Ac.21.00 gts was already passed on to the unofficial respondents and at this point of time, this Court is not inclined to interfere as the much water has flown after issuance of G.O.Ms.No.1473 dt.10-12-2008 and the appellant University has not challenged the modified interim order in an appeal nor the appellant had not challenged the exchange deed dt.14-04-2014 before any Court of law.

13. Therefore, at this point of time, this Court is not inclined to interfere with the orders of the learned Single Judge and that the learned Single Judge has rightly dismissed the Writ Petition with the following observation:

“The contention of the learned counsel for the petitioner University that in view of dismissal of the earlier writ petition filed by the unofficial respondents being W.P. No. 27316 of 2005, seeking implementation of the proposal of exchange of Acs.25-16 guntas for Acs.12-17 guntas on 30.12.2005, the unofficial respondents have to work out their remedies only in the civil Court does not deserve any merit and has to be rejected. The earlier writ petition was dismissed solely on the ground that the proposal of the University was already rejected by the Government by the time of hearing of Writ Petition. Another point raised by the learned Counsel for the petitioner to show that the land allotted to the University belongs to the University and that the State Government does not have any power for which proposition, the learned counsel has relied on is Section 5(23) of the University of Hyderabad Act, 1974. Section 5(23) of the University of Hyderabad Act, 1974 reads as under:-

“Section 5: Powers of the University.

The University shall have the following powers, namely:-

(1) to (22) xxx (omitted as not necessary)

(23) to receive donations and to acquire, hold, anage and dispose of any property, movable or

immovable, including trust and endowment properties for the purposes of the University;”

Section 5(23) of the University of Hyderabad Act, 1974 simply gives powers to the University to purchase, sell or do whatever they want in respect of the land which they are holding. There is absolutely no quarrel with the said proposition or the power of the University if any immovable property is purchased by the University is sought to be given away, exchanged or allotted to some other person or institution. But here is a case where the land has been allotted to the University vide letter D.O.No.3264/C1/74-II, dated 21.02.1975 with some conditions. The question as to whether they will have absolute right under the D.O. Letter, dated 21.02.1975 has to be gone into in appropriate case. With all due respect to the learned Counsel for the petitioner the facts in this Writ Petition are very peculiar and intrinsic to this case only, the University having suffered a decree and the same having become final, the reliance on Section 5 of the Act cannot be of much help. Therefore, the above argument is rejected. Once the University has sent another proposal, the same was accepted by the Government though not to the liking of the University and the impugned G.O. was issued. It is pertinent to note that no prejudice is caused to the petitioner University, as there is no decrease in the extent of land originally allotted to the University by virtue of the impugned G.O. As the University has got an equal extent of land from the unofficial respondents for which they are already having a decree, the

University cannot have any grievance with regard to the issuance of the impugned G.O. As culled out from the various instances enumerated above, the University having submitted a proposal to the Government for exchanging the land and seeking their permission to exchange the same cannot now contend that the Government does not have any say or authority to issue the impugned G.O. The Government, in its wisdom, has allotted an extent of Ac. 25-31 guntas of land in exchange for the land of Ac. 25-16 guntas belonging to the unofficial respondents duly taking into consideration the market value of both the lands and also that the same is at the corner of the University and no prejudice will be caused to the University, if the land of Ac.25-31 guntas is exchanged in lieu of Ac. 25-16 guntas in Sy. Nos. 14 and 16 to 23.

For the forgoing discussions and the reasons, this Court is of the firm view that the challenge to the impugned G.O. issued by the Government exchanging the subject land to the unofficial respondents in lieu of the land of Acs.25.16 guntas is without any merits. The University having suffered the decree, which was also confirmed in the first appeal by this Court, now cannot turn around and contend that the claim of the unofficial respondents be confined to only to an extent of Acs.21-00 gunts and not for Acs.25.31 guntas. Therefore, this Court does not find any merit in the present writ petition.

Accordingly, the Writ Petition is dismissed. However, in view of the peculiar facts of the present case, the present order came to be passed and this order cannot be cited as a precedent. The Government should avoid allotting any parcels of land which have already been allotted to the University pursuant to the Cabinet decision and in furtherance of a policy decision, and to the best extent possible, safeguard the entire land which was originally allotted to the University. The Government should see that no land of the University is allowed to be encroached, allotted or anyway diminished and see that the original extent of land allotted to the University is preserved.”

14. In view of the aforesaid observations, this Court is not inclined entertain the Writ Appeal and the same is accordingly dismissed. Pending miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

23.03.2022
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