THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION Nos.7707 and 7710 of 2019

COMMON ORDER:

The then A.P. Housing Board (now Telangana Housing Board) had issued a Demand Survey Notification No.005/E3/EO/2010 dated 16.09.2010 inviting applications for allotment of 50 LIG Houses under Self Financing Scheme at Jacherla, Site-II, at a 'Tentative Cost' of Rs.8,27,000/- (subsequently revised to Rs.12,43,000/-). In response thereto the petitioners herein submitted application for allotment of house.

WP.No.7707 of 2019:

2. (a) Petitioner submitted an application No.54 along with EMD of Rs.1,24,300/- (10% of the Tentative Cost) and necessary certificates. It is not in dispute that the tentative cost of the house was revised from Rs.8,27,000/- to Rs.12,43,000/-. The petitioner was allotted house No.20/LIG vide letter dated 31.07.2011 in Phase-II at Jacherla and was asked to pay a Rs.2,48,000/- being 20% of the tentative cost of Rs.12,43,000/- within four weeks from the date of receipt of the said letter. Further, she was asked to deposit a sum of Rs.3,10,750/- towards 25% of the tentative cost within 8 months, Rs.2,48,000/- towards 25% of the cost within 12 months from and Rs.3,10,750/- towards the remaining cost within 18 months from 31.07.2011. Under clause 6 of the allotment

letter dated 31.07.2011, it was stated that if there is any delay in making the above mentioned instalments within the stipulated time, the respondents would charge interest as per the rate fixed from time to time and on failure to pay the amount, action will be taken as per the rules in vogue.

(b) It is stated that the first instalment of Rs.1,24,300/- was paid by the petitioner and the remaining instalments were paid with delay along with interest. Subsequently, the total cost of the house was deposited. The payments were delayed as the petitioner was not keeping good health. As against the total cost of Rs.12,43,000/- the petitioner paid Rs.15,38,933/-, which included tentative cost with interest. While so, the petitioner was informed that her allotment has been cancelled for non-payment of instalments within the stipulated time in the letter dated 31.07.2011. The petitioner made a representation dated 14.03.2018 to the respondent No.2 for restoration of the above allotment, as the petitioner has paid total cost along with interest and penalty. However, by letter dated 08.01.2019, the petitioner was informed that the respondent No.1 ordered cancellation of allotment.

WP.No.7710 of 2019:

3. The petitioner was allotted house No.1/LIG at Phase-II at Jadcherla vide letter dated 07.07.2011 and intimated the petitioner

to pay 25% of the tentative cost of the house i.e. Rs.8,27,000/- within fifteen days and the remaining cost within eight months. The petitioner paid the first instalment of Rs.82,700/- within the stipulated time and the remaining instalments were paid with a delay along with accrued interest. Subsequently, the petitioner deposited the total cost of the house with delay due to health reasons and accordingly, as against the total cost of Rs.8,27,000/-, the petitioner paid Rs.10,23,000/-. The petitioner was informed that her allotment was cancelled by the respondent No.1. The petitioner submitted representation dated 14.02.2018 seeking restoration of her allotment intimating the respondent No.2 that total cost of the house has been paid along with interest and penalty. By letter dated 08.01.2019, the respondent No.2 intimated the petitioner that the respondent No.1 ordered to cancel her allotment.

4. In both the writ petitions, it is contended that one M. Laxmaiah, who was allotted house No.3/LIG, also committed default in making payment of instalments within the stipulated time, which lead to cancellation of his allotment by the respondents. When the said Laxmaiah made an application to the respondents for restoration of allotment of house No.3/LIG, the same was considered by the respondents accepting Rs.15,52,800/-

as against the final cost of Rs.10,23,000/- in respect of house No.3/LIG at Jadcherla.

5. Learned counsel for the petitioners contended that the action of the respondents is discriminatory and violative of Article 14 of the Constitution of India. Having accepted delayed payment from one M. Laxmaiah in respect of house No.3/LIG, the petitioners, who were similarly placed, have been given a different treatment and thus, the petitioners, having no other effective alternative remedy, have approached this Court.

6. The stand taken by the respondents in their counter affidavit is that the writ petitions are not maintainable, as it is covered by a contract entered between the petitioners and the respondent – Housing Board as per judgments of the Supreme Court in **BAREILLY DEVELOPMENT AUTHORITY v. AJAY PAL SINGH**[1] and **STATE OF GUJARAT v. MEGHJI PETHRAJ SHAH CHARITABLE TRUST**[2]. The respondents also relied on a judgment of this Court in WA.Nos.526 and 847 of 2008 dated, where there was difference of opinion between the Judges of a Division Bench, the matter was referred to a Third Judge and the majority view was that "*...after a contract has been entered into between the State or its instrumentality with an individual, relations will be governed by*

[1] AIR 1989 SC 1076
[2] (1994) 3 SCC 552

the terms and conditions of the contract, which are enforceable by civil Court and the aggrieved party cannot enforce extraordinary remedy of filing a writ petition in the High Court seeking its enforceability."

7. It is stated that the allotment of petitioners was cancelled by proceedings dated 03.09.2016 and without mentioning the date of cancellation, the writ petitions are filed. As per decision of a Division Bench of this Court in ***K. ANAND RAO v. THE ANDHRA PRADESH HOUSING BOARD*** (WA.No.79 of 2006 dated 30.01.2006), wherein following the decision of the Supreme Court in ***SURINDER SINGH v. CENTRAL GOVERNMENT*** it was held that the high Court cannot nullify an administrative/executive order or the decision of the Government, if copy thereof has not been placed on record. The writ petitions have been filed after two years seven months of cancellation of allotment and they are hit by delay and *laches*. The Division Bench further held that even though there is no upper limit or lower limit for filing writ petition under Article 226 of the Constitution of India, the petitioner must give satisfactory explanation for the delay.

8. It is further stated that though the petitioners have paid the first instalment and failed to pay the further instalments, in view of poor demand, the names of all 41 allottees including the petitioners

were included in the draw of lots held on 07.11.2014 for assignment of specific house numbers and the petitioners were allotted house Nos.20 and 1 respectively. By letters dated 05.01.2014, the petitioners were asked to pay the balance amount of Rs.11,18,700/- within a week failing which the allotment will be cancelled. Final notices dated 29.04.2015 and 30.04.2015 respectively were issued calling upon the petitioners to pay the balance amount of Rs.11,18,700/- on or before 20.05.2015. Later by letter dated 02.09.2015, the petitioners were informed that the cost of the house was fixed at Rs.10,23,000/- as against tentative cost of Rs.12,43,000/- and they were directed to pay the balance amount of Rs.8,98,700/- (after deducting the EMD of Rs.1,23,400/-) within one month and that physical possession will be handed over, after payment of the said amount. Again another final notice dated 22.01.2016 was issued to the petitioners to pay Rs.10,92,523/- within one month and the same was received by registered post. Since the petitioners failed to comply with the same, another notice dated 06.05.2016 was issued to pay an amount of Rs.11,29,056/-. Again second notice dated 14.06.2016 was sent by RPAD requesting the petitioners to pay an amount of Rs.11,38,469/- within 15 days failing which allotment will be cancelled.

9. It is further stated that the petitioners vide letters dated 05.11.2016 and 15.11.2018, cited financial constraints, crop loss, children's fee etc. for non-payment of instalments. Petitioner in WP.No.7707 of 2019 was informed that the competent authority viz. Vice-Chairman and Housing Commissioner, Telangana Housing Board, passed orders dated 23.02.2017 permitting restoration of allotment subject to the condition of the allottee paying 50% of the amount upfront and the remaining 50% within one month. Accordingly, vide letter dated 08.03.2017, the petitioner was informed to pay Rs.12,33,532/- by 31.03.2017 for restoring her allotment. However, the petitioner failed to comply with the same. The petitioner by letter dated 01.06.2017 requested the respondents to issue NOC for obtaining bank loan and accordingly, NOC was issued on 02.06.2017. In spite of that the petitioner failed to pay the balance amount. Hence, cancellation notice dated 24.10.2017 was issued informing her that the allotment is cancelled duly forfeiting the amount paid by her. Thereafter, the petitioner submitted a letter dated 14.09.2018 stating that she could not pay the amount, as she could not get bank loan and she enclosed mee-seva receipts for a sum of Rs.3,60,000/- dated 29.08.2018, Rs.6,00,000/- dated 06.09.2018 and for Rs.4,54,633/- dated 11.09.2018 and requested for restoration of her allotment. The total amount paid by her was Rs.15,38,933/-. However, the

petitioner was informed by letter dated 03.10.2018 that her allotment was already cancelled vide proceedings dated 03.09.2016.

10. It is stated that in case of petitioner in WP.No.7710 of 2019, she was intimated by letter dated 08.01.2019 that her request was rejected and vide letter dated 12.03.2019, the petitioner was again informed that her request for restoration of allotment was rejected.

11. In response to the averments of the petitioners that another allottee, namely, M. Laxmaiah, who was allotted house No.3/LIG, was restored allotment even after committing default in payment of instalments, the respondents contended that the question of discrimination and violation of Article 14 of the Constitution of India cannot be raised in a contractual matter and relied on a decision of the Supreme Court in **RADHAKRISHNA AGARWAL v. STATE OF BIHAR**[3]. The respondents have also relied on several decisions of the Supreme Court and contended that the petitioners have to show that they are entitled for restoration of allotment independently and cannot seek relief merely because in case of another allottee, such restoration was done. It is further stated that the burden is on the petitioners to show that their claim is similar to the case of M. Laxmaiah. While in the case of M. Laxmaiah,

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[3] AIR 1977 SC 1496

he stated that he could not pay the amount due to health reasons, but the reasons given by the petitioners are financial constraints. The decision in the case of M. Laxmaiah was taken on 01.09.2018 whereas in case of the petitioners it was taken on 17.12.2018 and it open to the competent authority to take a different decision at different times depending upon the facts and circumstances of the case at the time of taking such decision in the interest of the department. It is always open for to the authority to change its policy.

12. It is stated that merely because over three and a half months earlier the authority had taken a decision to restore allotment in case of another allottee, it is not necessary that in each and every case same decision has to be taken. The authority is entitled to take a different decision in the interest of the department. It is not the case that the authority has taken a decision in the case of the petitioners and the case of M. Laxmaiah on the same day or within short time, there is considerable time gap between the two cases. The Housing Board will get better price by putting the said houses to auction.

13. Learned counsel for the petitioners contended that the petitioners have taken financial assistance/loans to pay the cost of the houses. They do not have any house of their own. The houses

are not allotted to any third party and stay is in operation since 2019 and requests this Court to direct the respondents to take a lenient view as was taken in the case of M. Laxmaiah, whose allotment was cancelled and later restored.

14. Learned standing counsel for the respondent-Board contended that the case of M. Laxmaiah stands on a different footing compared to the case of the petitioners herein. The burden is on the petitioners to prove that both are similarly placed.

15. Having considered the submissions of the learned counsel for the petitioners and the learned standing counsel for the respondent-Board, this Court is of the opinion that cancellations of allotment of houses of the petitioners are liable to be set aside. It is to be seen that under the same notification No.005/E3/EO/2010 dated 16.09.2010, M. Laxmaiah, who was allotted house No.3/LIG, was extended the benefit of delayed payment of instalments. It is not in dispute that M. Laxmaiah's allotment was cancelled and thereafter, he was allowed to pay the instalments and allotment was restored. The reasons for delayed payment are not relevant and germane. The same may be for health reasons or non-grant of loan or other financial constraints. The Court has to keep in mind the underlying object of the provisions of the Telangana

Housing Board Act to provide housing to the deprived classes at affordable price.

16. In the instant case, the houses were constructed to be allotted to lower income group. The agreements were entered into by the petitioners and the respondent-Board on 19.11.2013 and 12.11.2014 respectively. But as evident from the record and admitted by the respondents, the petitioners were permitted to make delayed payment beyond the time stipulated in the agreements. From time to time, letters were addressed by the respondents requesting the petitioners to pay the amounts. Thus, there was no strict adherence to the terms and conditions of the agreement/allotment and such concession was given by the respondents because there was poor response from public for purchasing LIG houses under the notification dated 16.09.2010. As against 50 houses, there was response to only 41 houses. On their own volition the respondents kept on extending the time for payment of instalments. The respondents have deviated from the terms and conditions of the contract. Having restored the allotment of M. Laxmaiah, the action of the respondents in not extending the same benefit to the petitioners is arbitrary, unreasonable and in violation of Article 14 of the Constitution of India.

17. All the judgments cited by the respondents are on a different factual situation and no applicable to the facts of the instant case. The learned standing counsel for the respondents has not been able to convince the Court as to how the case of the petitioners differs from that of M. Laxmaiah. Even on the point of delay, it needs to be pointed out as borne out from the record, the application of M. Laxmaiah for restoration of allotment was made on 15.08.2018. Petitioners submitted applications on 14.03.2018 and 14.02.2018 respectively, which came to be rejected on 08.01.2019. Thus, it cannot be said that the writ petitions are filed with delay and *laches*.

18. Interim direction was granted by this Court on 12.04.2019. It is not the case of the respondents that after cancellation of allotment of the petitioners, the houses have allotted to third parties and steps have been taken to put the houses for auction sale. The petitioners have paid monies along with delayed interest and submitted representations seeking restoration of their allotment. There was, admittedly, delay on the part of the petitioners.

19. In the above circumstances, in order to balance the situation, this Court finds it appropriate to set aside the impugned orders cancelling the allotment of houses by directing the petitioners to

pay additional interest. The petitioners are directed to pay interest @ 6% per annum on Rs.12,43,000/- (revised cost of the house) from 08.01.2019 (date of cancellation) till the date of payment, within a period of two (2) months from the date of receipt of a copy of this order. The respondents are directed to re-allot House No.20/LIG and House No.1/LIG to the petitioners upon receipt of the said interest amount.

In view of the above, the writ petitions are allowed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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B. VIJAYSEN REDDY, J

January 25, 2023
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