

HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION No. 39656 OF 2022

ORDER:

This Writ Petition is filed seeking the following relief:

“ to issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus, declaring the action of the respondents in not considering for grant of building permission for construction of residential building in an extent of 1248.72 sq. yds. in Sy.No. 1841N of Dammakkapeta, Huzurabad, Karimnagar District, Telangana, as the same is not come under cut of date of Layout Regularisation Scheme, 2020 as per G.O.Ms.No. 131, dated 31.08.2020, as illegal, arbitrary and contrary to the Municipalities Act and consequently, direct the 2nd respondent to grant the building permission for construction of residential building in open plot in an extent of 1248.72 sq. yds. in Sy.No. 1841N of Dammakkapeta, Huzurabad, Karimnagar District, Telangana and to pass such other orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. Sri Polisetti Radha Krishna, learned counsel for petitioner submits that petitioner's mother executed a registered gift settlement deed dated 14.09.2022 gifting an extent of 1248.72 square yards in Survey No. 1841N of Dammakkapeta, Huzurabad, Karimnagar District, Telangana. The said property is ancestral property and her mother was also granted pattadar passbook by the revenue authorities. It is submitted that since then, petitioner has been in peaceful possession and enjoyment of the property. The Sub-Registrar mutated the name of the

petitioner in the revenue records by proceedings dated 14.09.2022. Learned counsel submits that petitioner with an intention to construct a residential building tried to make an Application on 10.10.2022 to the 2nd respondent but TS-bPASS is not accepting her *on line* Application on the ground that the same is in an illegal layout and the document is not within the cut-off date as per G.O.Ms.No. 131, dated 31.08.2020. He submits that the 1st respondent issued Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020 *vide* G.O.Ms.No. 131, Municipal and Urban Development (Plg.III) Department, dated 31.08.2020. Clause 6 of the said G.O. contemplates cut-off date for considering regularisation of unapproved layouts and sub-division of plots with registered sale deed / title deed existing as on 26.08.2020 shall be considered for regularisation under the Rules. Petitioner's mother had purchased the said plot after the cut-off date fixed by the 1st respondent, but her vendor is having title deed and pass book. Subsequently, the land use was converted from agricultural to non-agricultural. It is submitted that the respondents have issued G.O.Ms.No. 135, dated 16.09.2020 with certain amendments to G.O.Ms.No. 131, dated 31.08.2020 for regularisation of plots. Basing on the same, GHMC issued

Circular dated 28.12.2020 wherein the building permission in the plots which are not approved under Layout Regularisation Scheme may be considered by the competent authority by collecting basic penalisation charges as per Layout Regularisation Scheme, 2020 and 33% compounding fee on the same + open space contribution charges (14%) on the present market value of the plot applied for building permission and not permitting to collect the same fee for the sale deeds registered after the cut-off date i.e. 26.08.2020 is nothing but discriminatory and violative of Articles 14, 19 and 21 of the Constitution of India. Learned counsel submits that in view of the same, the 2nd respondent has to consider the building permission Application in an unapproved Layout. He submits that without considering G.O.Ms.No. 131, dated 31.08.2020 and Circular of the GHMC dated 30.12.2020, the 2nd respondent is refusing to consider the building permission Application, hence, the said action of the 2nd respondent is contrary to the above G.Os. Learned counsel submits that in similar set of facts, learned Single Judge of this Court following the order dated 24.10.2017 in Writ Petition No. 23191 of 2017, allowed Writ Petition No. 5150 of 2022, *vide* order dated 02.02.2022. He submits that the present Writ Petition is squarely covered by the

above order. It is submitted that recently, by order dated 10.08.2022, the Hon'ble Division Bench had dismissed Writ Appeal No. 1705 of 2018 preferred by the State aggrieved by the order passed by the learned Single Judge in Writ Petition No. 27390 of 2018 dated 10.10.2018. Learned counsel submits that this action of the respondents in not granting building permission is arbitrary, illegal and the petitioner is put to irreparable hardship and inconvenience.

3. Learned Government Pleader for Municipal Administration submits that the government has issued G.O.Ms.No. 131, dated 31.08.2022 duly incorporating a cut-off date. According to him, petitioner has not questioned the said G.O. and unless and until the said G.O. is questioned, the petitioner cannot maintain this Writ Petition. He submits that he will come up with a detailed counter-affidavit. It is submitted that the action of the respondent cannot be termed as discriminatory and it is a policy decision of the government.

4. Having heard the learned counsel on either side, perused the entire material on record.

5. Petitioner has relied on the order passed in Writ Petition No. 23191 of 2017, dated 24.10.2017. In the said Writ Petition, petitioner therein had questioned the action of the

respondents in not considering the Application for construction of residential building and the cut-off date set in Layout Regularisation Scheme, 2015 as per G.O.Ms.No. 151, dated 02.11.2015, and the said Writ Petition was disposed of directing the respondent Municipality to accept and process the Application of the petitioner for building permission in terms of Memo No. 2252/M1/2017 dated 28.04.2017 issued by the 1st respondent and pass appropriate orders as per law. Basing on this order, another order was passed in Writ Petition No. 1398 of 2022 wherein the petitioners therein have questioned G.O.Ms.No. 131, dated 31.08.2020 and the same was disposed of directing the respondents to consider the same in view of the earlier orders passed by this Court. Learned counsel for the petitioner submits that questioning the order passed in Writ Petition No. 27390 of 2018 dated 10.10.2018, Writ Appeal No. 1705 of 2018 was filed. He submits that the said Writ Appeal was dismissed and according to the petitioner, as the said Writ Appeal was dismissed affirming the order of the learned Single Judge wherein a direction was issued to consider the Application of the petitioner for building permission, this Writ Petition also deserves to be allowed.

6. Learned Single Judge has allowed the Writ Petition basing on a memo issued by the government in the year 2017. When the matter was carried in Writ Appeal and when G.O.Ms.No 131, dated 31.08.2020 was placed before the Division Bench, the Hon'ble Division Bench observed that 'Rule 4 of the aforesaid Rules provides for cut-off date for considering regularisation of unapproved layouts. Clause (a) thereof says that only those layouts and sub-division of plots with registered sale deed / title deed existing as on 26.08.2020 shall be considered for regularisation under the Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020. If this be the position, then the very substratum of the *lis* before the Division Bench would no longer survives as the claim of the respondent would be covered by the Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020. Earlier, the Writ Petition that is filed in the year 2017 was with regard to the G.O. of 2015. Now another G.O. was issued in the year 2020 where the cut-off date is mentioned as 26.08.2020. In view of the same, as the claim of the petitioner therein was covered by the latest G.O., the Division Bench has dismissed the Writ Appeal.

7. The respondents have issued G.O. for regularisation of the plots in unauthorised layouts. Unless and until the plot is regularised, the person cannot make an Application seeking building permission. Regularisation of unapproved layouts has been done by the government basing on the G.Os. issued from time to time. Thereafter, the government has issued notification whereby charges were amended. GHMC has addressed a letter dated 28.12.2020 to the Principal Secretary to Government stating that the government has issued Telangana Regularisation of Unapproved and Illegal Layout Rules, 2020 by giving opportunity to the plot / site owners on whose name the plot is registered with a registered sale deed executed on or before 26.08.2020 for regularising their plots and as per Rule 2(b) of the said order, the scheme is applicable to existing unapproved layouts / plots through registered sale deed on or before 26.08.2020. The last date for filing applications was 31.10.2020. It is stated that some of the plots / site owners have submitted Applications seeking building permission by enclosing *on line* receipts filed under LRS 2020. The government has issued clarification vide letter dated 06.04.2016 to consider building permission in the plots / sites which were not applied under LRS Scheme, 2015. It is submitted that instructions were

issued to process building permissions by levy of LRS charges with 33% compounding and 14% open space contribution charges on the building permission in the plots / sites which were not applied under LRS Scheme, 2015 and they have proposed to adopt the following procedure for applications received for building permission under the following categories:

- a) The plots / sites falling in unapproved / illegal layouts having documents registered on or before 26.08.2020 for which applications filed under New LRS 2020 scheme and applied for grant of building permissions, the building permissions in such cases can be processed duly collecting the fee / charges as per the LRS 2020 on submission of LRS 2020 acknowledgment receipt by the applicant in the respective building application.
- b) The plots / sites falling in unapproved /illegal layouts having documents registered on or before 26.08.2020 for which applications not filed under New LRS 2020 scheme, the building permissions can be processed duly collecting basic penalisation charges as per LRS-20202 and 33% compounding fee on the same, plus open space contribution charges (14%) on the present market value of the site / plot applied for building permission.

8. Basing on the said letter addressed by the Corporation, the government has issued proceedings dated 30.12.2020 whereby incorporating the very same procedure that was sought by the GHMC the government has issued the Memo. While issuing G.O.Ms.No. 131, the cut-off date was fixed as plots that were sold through sale deed on or before 26.08.2020. Even G.O.Ms.No. 135, dated 16.09.2020 has proposed the amendment about the regularisation charges and the memo that was issued in furtherance of the earlier G.Os. and the letter addressed by the Commissioner. The only distinction that is made is plots which were registered on or before 26.08.2020 where application is filed under the LRS Scheme and applied for grant of building permission where it can be processed as per the charges in LRS, 2020 and whereas in the second category the very same cut-off date is mentioned i.e. 26.08.2020 where they have not filed Applications under LRS 2020, it can be processed duly collecting basic penalisation charges as per LRS 2020 and 33% compounding fee on the same and open spaces contribution charges (14%) and the market value of the site. In issuing the said memo, the arbitrariness or discrimination that is pleaded by the parties is that they should not have imposed such a cut-off date, the persons who have not even filed

application under LRS are also getting the benefit and it is contrary to the earlier memos issued by the government. The government orders right from G.O.Ms.No. 131 are concerning about the cut-off date. When they want to regularise the layouts looking at different aspects and the implications involved in it, it is for the government to impose necessary conditions while implementing a policy. That policy decision of the government cannot be found fault with unless it is arbitrary, discriminatory or it has been pressed into service to facilitate a group of people.

9. In this case, government has taken a policy decision to regularise the lands in an illegal layout. Earlier also, G.Os. were issued fixing a cut-off date and time to time they are issuing the G.Os. fixing a cut-off date. As rightly pointed out by the learned Government Pleader the petitioner has not questioned the said G.O. The respondents in their wisdom have exercised their discretion, incorporated the cut-off date which is very much within the realm of the powers conferred on the respondents. If issuance of the said G.O. or incorporating the said cut-off date is arbitrary, unconstitutional, discriminatory or bad on any of the touchstone of the Constitution, the petitioner should have questioned the G.O. issued by the government by

raising relevant grounds. The petitioner neither questioned the G.O. nor raised any such ground. The legal position on this aspect is no more *res integra*.

10. Judicial review, as is well known, lies against the decision-making process and not the merits of the decision itself. If the decision-making process is flawed inter alia by violation of the basic principles of natural justice, is ultra vires the powers of the decision maker, takes into consideration irrelevant materials or excludes relevant materials, admits materials behind the back of the person to be affected or is such that no reasonable person would have taken such a decision in the circumstances, the court may step in to correct the error by setting aside such decision and requiring the decision maker to take a fresh decision in accordance with the law. The Court, in the garb of judicial review, cannot usurp the jurisdiction of the decision-maker and make the decision itself. Neither can it act as an appellate authority of Tafr.

In the context of Indian jurisprudence, the Constitution is the supreme law. All executive or legislative actions have to be tested on the anvil of the same. Such actions will have to draw their sustenance as also their boundaries under the same. Any action falling foul of the constitutional guarantees will call for

corrective action in judicial review to ensure adherence to the constitutional ethos. But so long as the fabric of the constitutional ethos is not set as under, the Court will have to exercise restraint, more particularly in matters concerning domain experts, else the risk of justice being based on individual perceptions which may render myths as realities inconsistent with the constitutional ethos. Courts often adjudicate disputes that raise the question of how strictly should they scrutinize executive or legislative action. Therefore, courts have identified certain questions as being inappropriate for judicial resolution or have refused on competency grounds to substitute their judgment for that of another person on a particular matter.

Vasavi Engg. College Parents Assn. v. State of Telangana ¹

11. We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquieu system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of

¹ 2019 7 SCC 172

Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.

*Fertilizer Corpn Kamgar Union v. Union of India*²,

12. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is “illegality”, the second “irrationality”, and the third “procedural impropriety”. These principles were highlighted by Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* [*Council of Civil Service Unions v. Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.”

NCT of Delhi v. Sanjeev,³

² 1981 1 SCC 568

³ 2005 5 SCC 181

13. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.

Peerless General Finance and Investment Co. Ltd. v. RBF⁴,

14. At this juncture we are obliged to say that in a complex fiscal evaluation the Court has to apply the doctrine of restraint. Several aspects, clauses, contingencies, etc. have to be factored. These calculations are best left to experts and those who have knowledge and skills in the field. The financial computation involved, the capacity and efficiency of the bidder and the perception of feasibility of completion of the project have to be left to the wisdom of the financial experts and consultants.

⁴ 1992 2 SCC 343

The courts cannot really enter into the said realm in exercise of power of judicial review. We cannot sit in appeal over the financial consultant's assessment. Suffice it to say, it is neither *ex facie* erroneous nor can we perceive as flawed for being perverse or absurd.”

Tangedco Ltd. v. CSEPDITrishe Consortium ⁵

15. In examining a question of this nature where a policy is evolved by the Government, judicial review thereof is limited. When policy according to which or the purpose for which discretion is to be exercised is clearly expressed in the statute, it cannot be said to be an unrestricted discretion. On matters affecting policy and requiring technical expertise the court would leave the matter for decision of those who are qualified to address the issues. Unless the policy or action is inconsistent with the Constitution and the laws or arbitrary or irrational or abuse of power, the court will not interfere with such matters.

*Railway Officers Assn v. Union of India*⁶,

16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate

⁵ 2017 4 SCC 318

⁶ 2003 4 SCC 289

Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

The scope of judicial review in policy matters is no longer *res integra*.

It is settled law that the Court would not ordinarily interfere with the policy decision of the executive unless the same can be faulted on the grounds of malafides, unreasonableness, arbitrariness or unfairness, in which case the policy would render itself to be declared unconstitutional.

Directorate of Film Festivals v. Gaurav Ashwin Jain ⁷

⁷ 2007 4 SCC 737

17. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

*Balco Employees Union v. Union of India*⁸,

18. There is no doubt that this Court has held in more than one case that where the decision of the authority is in regard to the policy matter, this Court will not ordinarily interfere since these policy matters are taken based on expert knowledge of the persons concerned and courts are normally not equipped to question the correctness of a policy decision. But then this does not mean that the courts have to abdicate their right to scrutinize whether the policy in question is formulated keeping in mind all the relevant facts and the said policy can be held to be beyond the pale of discrimination or unreasonableness, bearing in mind the material on record. ... Any decision, be it a simple administrative decision or a policy

⁸ 2002 2 SCC 333

decision, if taken without considering the relevant facts, can only be termed as an arbitrary decision. If it is so, then be it a policy decision or otherwise, it will be violative of the mandate of Article 14 of the Constitution.”

*Union of India v. Dinesh Engineering Corporation*⁹,

19. In the light of the above legal position, this Court cannot interfere with the policy decisions taken by the respondent in the process of judicial review unless the said decision of the government is *mala fide*, unfair, unreasonable, arbitrary, irrational or perverse. The decision or the policy of the government cannot be interfered on the simple ground that it affects the interest of a particular group / section of people. Court cannot sit on appeal over the decision of the government and advice them to adopt a particular policy. The Courts should refrain from interfering with the policies of government without valid reasons. The government in its wisdom and looking at several parameters has fixed a cut-off date, some of the petitioners have purchased the property after the cut-off date and as they are not able to enjoy the fruits of the said G.O., on that ground alone, the policy decision of the government cannot be found fault with. A novel argument was also advanced

⁹ 2001 8 SCC 491

stating that as on the cut-off date, the vendor has a title, this argument cannot be countenanced as the title deed that is mentioned is of the applicant but not of that property. It is also well-settled that the Constitution does not permit the Court to advice the Executive in the matter of policy which under the Constitution lies within the sphere of the Legislature or Executive provided the authorities do not transgress their constitutional limits of statutory power.

20. In view of the above discussion, the first and foremost lacuna is that the petitioner has not questioned the G.O. issued by the government. Secondly, the judgments which they are relying on also do not come to their rescue, because all those orders were passed basing on facts of a particular case and the G.Os. that were subsisting as on that date and there is no ratio laid down in any of the orders which is binding on this Court. Even the Hon'ble Division Bench also basing on the facts of the case taking into consideration the later G.Os. has passed the order dismissing the Writ Appeal filed by the State. This Court finds no illegality in imposing such a cut-off date and when once plot is not regularised, question of directing the respondents to consider the building application of the petitioner will not arise. The petitioner miserably failed to make

out any ground much less a legal ground to interfere with the cut-off date imposed in the G.O. and the consequential prayer for granting building permission.

21. Accordingly, the Writ Petition is dismissed. No order as to costs.

22. The Miscellaneous Applications, if any shall stand automatically closed.

LALITHA KANNEGANTI, J

06th January 2023

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