**HIGH COURT OF ANDHRA PRADESH : AMARAVATI**

# FULL BENCH

**CHIEF JUSTICE J.K.MAHESHWARI**,

**JUSTICE A.V.SESHA SAI**

**AND**

**JUSTICE M.SATYANARAYANA MURTHY**

**I.A.No.1 OF 2020 IN W.P (PIL) No. 49 OF 2020**

G. Hari Govinda Prasad
S/o.Koteswara Rao, aged 37 years,
r/o.D.No.1-47, Velagapudi village,
Amaravathi, Guntur District.
and 5 others .. Petitioners

Versus

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Revenue Departmnt (Assignment),
Secretariat Buildings, Velagapudi,
Amaravati, Guntur District and 4 others. .. Respondents

Counsel for the Petitioner : Sri Ginjupalli Subba Rao

Counsel for respondents : Advocate General.

**I.A.No.1 OF 2020 IN W.P. No. 5994 OF 2020**

Pathan Munna
S/o. Jani Khan, aged about 29 years,
Labourer, r/o.6-27, Rayapudi,
Rayapudi, Guntur District
and 2 others .. Petitioners

Versus

The State of Andhra Pradesh,
Rep.by its Chief Seretary, Buildings-I,
1st Floor, Secretariat, Velagapudi,
Amaravati, A.P., and 4 others. .. Respondents

Counsel for the Petitioner : Sri Sai Sanjay Suraneni

Counsel for respondents : Advocate General.

**I.A.Nos.1 & 2 OF 2020 IN W.P (PIL) No. 42 OF 2020**

Avala Nanda Kishore,
S/o.A.Prakash, aged about 41 years,
Occ:Farmer r/o.1-16a, Krishnayapalem,
Guntur District, A.P.-522 503. .. Petitioner

Versus

The State of Andhra Pradesh,
Through its Principal Secretary,
Municipal Administration & Urban Development
Department, Secretariat Building at Velagapudi,
Guntur District, Amaravati and 6 others. .. Respondents

Counsel for the Petitioner : Sri Karumanchi Indraneel Babu

Counsel for respondents : Advocate General.

**I.A.Nos.1 & 2 OF 2020 IN W.P No. 5140 OF 2020**

Kolli Sambasiva Rao
S/o.Koti Ratnam,
Job, aged 50 years, r/o.12-41,
Tulluru, Guntur District. .. Petitioner

Versus

The State of Andhra Pradesh,
Rep.by its Chief Secretary,
Buildings-I, 1st floor, Secretariat,
Velagapudi, Amaravati, A.P., and 4 others. .. Respondents

Counsel for the Petitioner : Sri Sai Sanjay Suraneni

Counsel for respondents : Advocate General.

**:COMMON ORDER:**
**Dt:23.03.2020**

1) All these interlocutory applications are filed under Section 151 of the Code of Civil Procedure, seeking interim relief to suspend G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.44 dated 12.02.2020 during pendency of the main writ

petitions. Since the relief in all the interlocutory applications is one and the same, we find it appropriate to decide all the applications by common order.

2) The above writ petitions are filed by the petitioners, claiming to be the residents of Thulluru, Krishnayapalem and other Villages, which are part of the capital city area. The petitioners are the absolute owners and possessors of various extents of patta lands in Mandadam and Thulluru Villages in Guntur Districts and they have surrendered their lands to the capital region development or for Andhra Capital City under Land Pooling Scheme, formulated by Government of Andhra Pradesh for establishment of Capital City for the State of Andhra Pradesh, consequent upon bifurcation of erstwhile State of Andhra Pradesh into the State of Telangana and State of Andhra Pradesh by Andhra Pradesh State Re-Organization Act, 2014, which came into force on 02.06.2014 and the residuary State of Andhra Pradesh is left with no independent capital. The Central Government has constituted Sri Sivaramakrishnan Committee on 28.03.2014 to study various alternatives regarding new capital city to the successor State of Andhra Pradesh and to make specific recommendations within six months from the date of the advent of A.P. Reorganization Act i.e. on 31.08.2014. The Committee has provided for reservation and allotment of land for various purposes in the Land Pooling Scheme. The Committee made its recommendations which consequently culminated into Andhra Pradesh Capital Region Development Authority Act, 2014 (for short

'the Act'), providing various financial schemes in the Act, itself for establishment of capital region. In view of the provisions of the Act, all these petitioners have surrendered their lands accepting the proposals for allotment of developed plots. The State formulated Master Plan under Section 38 and developmental Schemes under Section 59 to carry out the purpose of the Act.

3) As per Section 53(1)(d) of the Act, atleast five percent of the total area pooled under land pooling scheme may be reserved for providing affordable housing for the poor. Taking advantage of Section 53(1)(d) of the Act, G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.44 dated 12.02.2020 which are impugned in the present writ petitions have been issued. It is the case of the petitioners that, the proposed allotment is ultravires to Section 53(1)(d) of the Act and contrary to the object of the Act, and the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules 2015 (for short 'Rules of 2015').

4) It is stated that, according to the Rules of 2015, it is the role and responsibility of the Government to provide housing to stakeholders residing within the area under Land Pooling Scheme who are houseless as well as those losing their houses in the course of development. It is the further case of the petitioners that the said land cannot be and ought not to be allotted to non-stakeholders i.e. persons who are not residents of capital city area notified by the

State of Andhra Pradesh under Section 3 of the Act; that G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 is issued for allotment of land to non-stakeholders i.e. persons who are non-residents of the capital city area and to the exclusion of residents of the capital city area; that the proposed allotment of Ac.1251-5065 cents by the Government would amount to extinguishment of entirety of the land bank available and reserved for developing housing for the poor residents of the capital city area for the years to come. Therefore, it is contended that G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.44 dated 12.02.2020 which are impugned and contrary to the provisions of the Act and without any authority for such allotment.

5) In W.P (PIL).No.42 of 2020, certain additional grounds are also raised with regard to change of master plan and zoning regulations with reference to units classified as R-1, R-2 and R-3 and approval of Master Plan, including developmental activities. But, the core contention in I.A.Nos.1 of 2020 in W.P (PIL) No.42 of 2020 and W.P.No.5140 of 2020 is that, in case the land is allotted to poor people of outside capital city area, it would defeat the very object of enacting the Act and reserving five percent of land total area pooled under land pooling scheme as housing for the poor.

6) Even according to G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020, the intention is to provide land for the beneficiaries of Vijayawada Municipal Corporation, Krishna District and Tadepalli Municipality, Mangalagiri Municipality and selected

Gram Panchayats of Tadepalli, Duggirala, Mangalagiri, Pedakakani Mandals of Guntur District. It is further stated that, the basis for issuing G.O.Ms.No.107 dated 25.02.2020 and G.O.Ms.No.44 dated 12.02.2020 is Section 53(1)(d) of the Act and it is eventually prayed that, if no interim order is granted, the entire land pooling, including establishment of land bank etc would become otiose.

7) Respondent Nos.1 & 2 in W.P (PIL).No. 42 of 2020 and Respondent Nos. 1, 2 & 3 in W.P. No. 5140 of 2020 filed common counter affidavit and the same has been adopted by the Collector and District Magistrate, Guntur and Commissioner, C.R.D.A by filing separate affidavits, adopting the said counter. It is stated that the writ petitioner in W.P. No. 5140/2020 claims to be a landless and houseless poor who has been identified for receipt of pension under the Land Pooling Scheme which is paid to his wife Smt. Kolli Nirmala w.e.f. December 2017 in terms of G.O.Ms. No. 30 MA & UD (CRDA-2) Department dated 10.2.2016; that Smt. Kolli Nirmala is identified as a beneficiary under Indiramma housing Scheme – phase III, whereunder she was sanctioned a housing Unit for constructing a house in a plot claimed to be owned by her in Gram Kantam – i.e. land owned by the Government and administered by the Gram Panchayat, a possession certificate No.168/08, dt.11.07.2008 for land admeasuring 120 sq yards in Sy. No. 39 in Thullur Village (part of Amaravati Capital City Area) was issued by the Tahasildar concerned. In pursuance of the same, Smt. Kolli Nirmala received financial assistance of Rs. 34,250/-; that suppressing the said fact,

the writ petition is filed on this ground alone, the petition is liable to be dismissed and that, it is a clear abuse of process of law.

8) The respondents specifically contended that, G.O. Ms.No.107 of the MA&UD (M2) Department, dated.25.02.2020 is issued to comply with the requirement of Section 53(1)(d) occurring in Chapter IX of AP CRDA Act, 2014 and the respondents have undertaken to provide affordable houses to the poor within the limits of Amaravati area and they are bound to provide houses to the poor in terms of the Constitutional mandate.

9) It is also contended that, the apprehension of the petitioners that, land pooled in pursuance of the scheme enunciated under the statutory rules comprised in G.O.Ms.No.1 of the MA&UD (M2) dated 1.1.2015 is to be developed only for the purposes of the capital city and not for any other purpose is baseless; that it is specifically mentioned in Section 53 (1)(d) of the Act that atleast 5% of the land so pooled to be ear-marked and reserved for the purposes of housing for poor. It is to ensure that a capital city and the associated developments initially targeted do not make the capital city beyond the reach of under-privileged and weaker sections of the community. Therefore, the G.O.Ms.No.1 of the MA&UD (M2) dated 1.1.2015 was issued affording houses to the poor.

10) The respondents denied the allegation made in paragraph Nos. 11 and 13 in W.P.No.5140 of 2020, while stating that the impugned G.O. contemplates notification of an extent of Ac.1251-5065 cents for

being deployed for the purpose of house sites which is in addition to Ac. 87 earlier earmarked for the said purposes which covers 1338 acres within the capital city area earmarked for the weaker-section housing. The total extent, at the minimum earmarkable for the said purpose, relatable to the extent of the land so far pooled, i.e., 34,385.28 acres works out 1719 acres. After accounting for the 1338 acres so far identified, a further extent of 381 acres would be still available for future needs for the same purpose. However, this would not preclude the Government to enhance the extent of land within the capital city for being developed for the purpose, in the event of the eligible beneficiaries being available and willing to reside in the capital city. Therefore, the allegation that it would cause devastation to the land bank and the capital is without any basis.

11) It is also specifically contended that, the contention that, on the basis of Schedule-III of the Land Pooling Scheme, the Government has to provide housing only to those people who are houseless in the capital city area and those losing houses in the course of development is incorrect and untenable. According to the respondents, in other words, the contention of the petitioners that Section 53(1)(d) of the Act provides affordable housing to only those residing in CRDA capital city and that any relocation of such classes of citizens from out of the CRDA (capital city), would tantamount to a demographic change, is untenable in law. It is further stated, the Government proposed to comply with the proviso under Section 53(1)(d) of the Act r/w Clause (ii) of Part I of Schedule III of the Land

Pooling Scheme and issued those G.Os. The respondents also explained the total extent pooled, notified and other details, but, they are not relevant for deciding the real issue.

12) The respondents denied the contention that the State has no authority to distribute the land pooled, while contending that, Section 57 (2) of the Principal Act vests the lands pooled only with the CRDA. The said provision is substituted by Section 4 of Amending Act 1/2018, which reads as under;

> ***"4. Amendment of Section 57:- In section 57 of the Principal Act, for sub-section 2, the following shall be substituted, namely;-***
>
> ***(2) The notified area under the final land pooling scheme shall vest absolutely with the State Government and authority acting on behalf of Government, free from all encumbrances, for reconstituting and implementing the land pooling scheme. The lands shall be managed by the Authority for the purposes of this Act".***

13) It is specifically contended by the respondents that the Government proposed to distribute land to the poor under the scheme "Navaratnalu - Pedalandariki Illu", vide G.O. Ms. No. 367 dt. 19.08.2019, under BSO No. 21 and in terms of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (henceforth 'Act 9 of 1977'). The guidelines laid in the said G.O.Ms.No. 367 dated 19.8.2019 were revised in the form of additional guidelines issued in G.O.Ms.No. 488 dated 2.12.2019 wherein the character of the conveyance was one of modes of allocation and not an "assignment" for the purpose of Act 9 of 1977; that the terms of such policy are therefore not governed by the provisions of Act 9 of 1977 and the

contentions of the writ petitioners posited on such premise are misconceived. It is further contended that the stipulation of duration of lock in period envisaged in the impugned G.O and the consequential processes therefore are valid in law. It is also contended that the 'Land' being an entity within the legislative competence of the State in pursuance of Entry 18 of List – 2 of the Constitution of India, the impugned G.O. can't be validly contended to be beyond the competence of the State, more particularly in view of Article 162 of the Constitution of India whereby the executive power of the State is co-extensive to the legislative power of the State in respect of subject matters to be dealt with and regulated. The State has embarked on the said scheme, in pursuance of the obligations cast on the State under Part IV of the Constitution and the executive action, as comprised in the said GOs enshrining "pedallandiriki illu" seeks to endeavor to achieve the object of Article 39 of the Constitution. Therefore, it is contended that the G.Os cannot be held to be irregular.

14) While referring to contention of the petitioners that the persons belong to the area outside the notified capital area cannot be accommodated within the capital area in the land pooled, it is stated in the counter affidavit that the State is empowered to allot the land to any person within the capital city area and the same would not cause any damage to the capital demography and it is eventually prayed to dismiss the interlocutory applications filed along with the writ petitions.

15) Along with the counter affidavit, the respondents filed the following G.Os to substantiate their contentions.

1. G.O.Ms.No.107 MA & UD (CRDA-2) Department dated 25.02.2020
2. G.O.Ms.No.66 MA & UD (CRDA-2) Department dated 13.02.2019
3. G.O.Ms.No.74 MA & UD (CRDA-2) Department dated 14.02.2019
4. G.O.Ms.No.367 MA & UD Revenue (Assignment-I) Department dated 19.08.2019
5. G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019
6. G.O.Ms.No.5 Law (F) Department dated 02.01.2018
7. A.P. Gazette No.1
8. G.O.Ms.No.213 MA & UD (U H) Department dated 24.05.2017
9. G.O.Ms.No.141 MA & UD (M2) Department dated 09.06.2015
10. G.O.Ms.No.34 MA & UD (CRDA-2) Department dated 24.01.2019
11. G.O.Ms.No.207 MA & UD (CRDA-2) Department dated 08.08.2016
12. G.O.Ms.No.227 MA & UD (CRDA-2) Department dated 15.06.2017

16) During hearing, learned Advocate General reiterated the contentions urged in the counter affidavit filed by the respondents and those contentions will be dealt at appropriate stage.

17) Learned Advocate General mainly contended that, immediately after completion of land pooling, the land would vest in the Government and the Government is alone competent to alienate the property and Andhra Pradesh Capital Region Development Authority is only a custodian of the property that vested in the Government. He has drawn our attention to Section 57 of the Act, which deals with

final notification of land pooling scheme and amendment thereto. For better appreciation of the case, G.O.Ms.No.107 dated 25.02.2020 is extracted hereunder.

**MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT (CRDA.2) DEPARTMENT**

**G.O.Ms.No.107** **Dated:25.02.2020**

**Read the following:-**

1. From the Commissioner, APCRDA letter. No.MAU61LND0LPS/9/2020-EST, dt.04.01.2020.
2. From the Commissioner, APCRDA File.No.CRDA/Land Allotments/2020, dt.20.02.2020

* * *

**O R D E R**:

Government in furthering its commitment to the welfare of the people in the State, have initiated a flagship programme of allotting 25.00 Lakh House sites / Housing units under " Pedalandariki Illu under Navaratnalu Scheme".

2. To achieve this noble objective, it is decided that, CRDA shall provide land for the beneficiaries of Vijayawada Municipal Corporation, Tadepalli Municipality, Mangalagiri Municipality and selected Gram Panchayats of Tadepalli, Duggirala, Mangalagiri, Pedakakani Mandals.

3. In view of the above, the Commissioner, APCRDA in the letter 2nd read above, has stated that the Collectors of Krishna & Guntur Districts made a request to the Commissioner, APCRDA for allotment of identified lands to an extent of Ac.1251.51 Cents in the villages of Nowluru, Krishnayapalem, Nidamarru, Inavolu, Kuragallu and Mandadam for allotment of house sites to Economically Weaker Sections under "Pedalakandariki Illu" flagship program.

4. Further, the Commissioner, APCRDA has stated that as per sec. 53(d) of APCRDA Act, 2014 at least five (5) percent of total area pooled under Land Pooling Scheme may be allotted for providing affordable housing for the poor. In this regard, it is to submit that, an extent of Ac.87.02 cents of land pooled under LPS in Capital City, Amaravati was already utilized for housing purpose for the poor. In light of the requests made by the Collectors and facts stated above, the Commissioner, APCRDA has requested the Government to issue suitable orders in this regard.

5. After careful examination of the matter and in order to allot the house sites to the beneficiaries of above mentioned areas in CRDA area, Government hereby approve the following modalities to be taken up exclusively under Navaratnalu-Pedalandariki Illu programme.

**I) Details of Beneficiaries & Extent of Land identified for allotment in CRDA area :-**

| **Sl No** | **Name of the District/ Mandal** | **No. of beneficiaries** | **Extent required (Acs)** | **Village to be accommodated in CRDA Area** |
|---|---|---|---|---|
| **GUNTUR DISTRICT** | | | | |
| 1 | Tadepalli | 11300 | 215.00 | Nowluru |
| | | | 37.00 | Krishnayapalem |
| 2 | Pedakakani | 1308 | 31.97 | Krishnayapalem |
| 3 | Mangalagiri | 10247 | 250.48 | Nidamarru |

| | | | | |
|---|---|---|---|---|
| 4 | Duggirala | 2500 | 6.11 | Krishnayapalem |
| **KRISHNA DISTRICT** | | | | |
| 1 | Vijayawada Municipal Corporation | 28952 | 53.1007 | Inavolu |
| | | | 63.186 | Krishnayapalem |
| | | | 38.3062 | Kuragallu |
| | | | 332.0436 | Nidamarru |
| | | | 169.31 | Mandadam |
| | **TOTAL** | **54307** | **1251.5065** | |

**II) Beneficiaries list**

District collector Krishna & Guntur shall provide the list of beneficiaries to whom the house sites are to be allotted in the CRDA to the Commissioner, APCRDA.

**III) Extent of House site patta**

One house site patta shall be issued for an extent of 1 cent in the name of woman beneficiary of the house.

**IV) Development of layout**

CRDA shall take up development of layout, clearly demarcating the plots @ 1 cent per beneficiary and numbering the plots on the ground.

V) Conveyance deed shall be executed by the CRDA to the beneficiaries in the name of woman beneficiary only.

VI) Funds required for the layout development taken up by CRDA shall be provided by Revenue Department.

VII) CRDA shall take up housing scheme which shall be one of its unique models in the State with uniform elevation.

**VIII) Implementation**

A committee of three Officers with the Commissioner, APCRDA and the District Collectors of Krishna & Guntur shall be constituted for implementation of the programme.

6. The Commissioner, APCRDA and the Collectors of Krishna & Guntur shall take necessary action accordingly.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)**

**J.SYAMALA RAO**

**SECRETARY TO GOVERNMENT**

18) According to Section 57(2) of the Act, (Principal Act - 2014) the notified area under the final land pooling scheme shall vest absolutely with the Authority or the developer entity, as the case may be, free from all encumbrances, for reconstituting and implementing the land pooling scheme. However, this provision came to be amended by Act No.1 of 2018 by the Government on 02.01.2018.

The original provision of Section 57(2) and the amendment thereto are tabulated hereunder for better appreciation of the case:

| **Section 57(2) of the Act, 2014**<br><br>**(Principal Act)** | **Amendment to Section 57(2)**<br><br>**Vide Act No.1 of 2018 dated 02.01.2018** |
|---|---|
| The notified area under the final land pooling scheme shall vest absolutely with the Authority or the developer entity, as the case may be, free from all encumbrances, for reconstituting and implementing the land pooling scheme. | The notified area under the final land pooling scheme shall vest absolutely with the ***State Government and Authority acting on behalf of Government,*** free from all encumbrances, for reconstituting and implementing the land pooling scheme. ***The lands shall be managed by the Authority for the purposes of this Act.*** |

19) It appears that the amendment was brought to the Act, conveniently by the State to have direct control over the pooled land. Therefore, as per amendment to Section 57(2), the Government is the owner of the land that vested in it after completion of land pooling. While referring to this amendment, the learned Advocate General vehemently contended that the Government is competent to assign or dispose of the lands in favour of the landless poor.

20) Upon hearing the contentions, it is relevant to refer to Section 53(1)(d) of the Act, which is the basis for issuance of G.O.Ms.No.107 dated 25.02.2020. Section 53(1)(d) obligates the authority that atleast five percent of total area of the land pooled under the scheme shall be for providing affordable housing for the poor. When the Act, itself permits affordable housing for the poor, the Government intended to allot house sites to various poor persons as

house sites. But, housing for the poor is different from allotment of lands. ***The word 'housing' though not defined under the Act, it is meant to provide houses by raising construction, but not site for construction***. Even if the land is allotted to poor for housing purpose, they may not be in a position to construct houses on account of financial condition.

21) Section 57 of the pre-amended Act, deals with final notification of land pooling scheme. Sub-section (6) thereof, says that all lands reserved for the parks, play grounds and open spaces, and all lands allotted for roads, social amenities and affordable housing shall be deemed to be handed over to the Authority upon notification of the final land pooling scheme. The affordable housing scheme referred in Sub-Section (6) of Section 57 refers to Section 53(1)(d) of the Act. Therefore, the land is deemed to have been vested in the authority directly under the control of the Authority.

22) At this stage, it is relevant to deal with the Land and Property Related Provisions contained in Chapter XIII of the Act. According to Section 124 of the Act, the Authority may acquire any movable or immovable property by way of purchase, exchange, gift, lease, mortgage, negotiated settlement, or by any other means permissible under any law. When the authority is permitted to acquire immovable property under the prescribed modes mentioned in the Act, 2014, including land pooling, the Authority is deemed to have control over the same, on acquiring the land in different modes of acquisition.

23) It is the obligation of the Authority to create and maintain a Capital Region Land Development Bank in which all lands acquired, allotted, purchased or obtained through any mode shall be maintained, protected and used for the furtherance of the objectives of the Act. (vide Section 127 of the Act). If, for any reason, the entire land of Ac.1251-5065 cents is distributed to any other person(s), the question of creating Capital Region Land Development Bank under Section 127 of the Act does not arise, since there is nothing to be developed by the Capital Region Land Development Bank.

24) According to Sub-section (1) of Section 128 of the Act, the '***Authority'*** shall have the ***"first right of alienation of Government lands"*** within the capital region and such lands which may be required by the Authority shall be transferred to the Capital Region Land Development Bank. Thus, it is evident from Section 128 of the Act that, if any Government land is to be alienated within the capital region, such land which may be required by the Authority, shall be transferred to the Capital Region Land Development Bank and it cannot be kept with any of the Authorities or the Government. But, totally deviating from Section 127 to Section 128, usurping the powers of the Authority under the Act, passed G.O.Ms.No.571 Revenue (Assignment-I) Department dated 14.09.2012, G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 with a view to provide house sites to various persons.

25) According to Section 130 of the Act, any land acquired by the Government and transferred to the Authority or any Government land alienated to the Authority, with or without development thereon, or any other immovable property belonging to the Authority, may be disposed of by the Authority in accordance with standing orders made for the purpose in this behalf.

26) On analysis of Sections 128 and 130 of the Act, it is clear that the Capital Region Development Authority alone is competent to dispose of the land acquired by the Government under Land Pooling Scheme or any land acquired by the Government and transferred to the Authority or any Government land alienated to the Authority and the Government has no authority to dispose of such land. Though, the State conveniently amended Section 57(2), but Sections 128 and 130 of the Act holds the field, which confers powers for alienation.

27) On overall consideration of the entire provisions of the Act, though the land is deemed to vest on the Government, in view of amendment by Act No.1 of 2018 to Section 57(2) of the Act, no power is conferred on the State Government to dispose of the land. Sections 128 and 130 of the Act alone are the enabling provisions to dispose of the land by the Capital Region Development Authority. Even assuming that the power of Capital Region Development Authority is limited to alienate the land that is acquired by the Government under Land Pooling Scheme or any land acquired by the Government and transferred to the Authority or any Government land transferred to the Authority, the Government may not have

authority to dispose of such land, in the absence of any provision permitting the Government to dispose of the land under the provisions of the Act.

28) According to Section 57(2) of the Act, the land is deemed to vest on the Government, in view of the amendment by Act No.1 of 2018 to the CRDA Act and the Andhra Pradesh Capital Region Development Authority is only being custodian of the lands/property having control over it. The Authority to dispose of such lands is only with the Andhra Pradesh Capital Region Development Authority, but not to the Government, as discussed above. Therefore, the Government has no authority or power to alienate the land that vested on the Government which deemed to have transferred to the authority, issuance of G.O.Ms.No.571 Revenue (Assignment-I) Department dated 14.09.2012, G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 for alienation of the lands by the Government, is *prima facie* contrary to the statute provisions.

29) According to the respondents, obviously, the alienation is not under The A.P. Board of Revenue Standing Orders to grant any assignment in favour of landless poor. The same is specifically asserted in Paragraph No.11 of the common counter filed by Respondent No.1 & 2 in W.P (PIL).No. 42 of 2020 and Respondent Nos. 1, 2 & 3 in W.P. No. 5140 of 2020. But, they are exercising power under Section 53(1)(d) of the Act and therefore, it would not

attract the provisions of Act 9 of 1977, as such, the consistent plea of the respondents is that, it is only an alienation of the Government land or the land that vested on the Government by exercising power Section 53(1)(d) of the Act.

30) Undoubtedly, after completion of land pooling, the land is deemed to have been vested in the Government in terms of amended provision i.e. Section 57(2) of the Act. But as discussed above, it is directly under the control of Capital Region Development Authority. However, as per Section 130 of the Act, authorized the Capital Region Development Authority is authorized to dispose of the land acquired and even vested with the Government. Thus, when the land is vested in the Government, still it is under the control of Capital Region Development Authority. In any view of the matter, when the land is divested, the State is deemed to be a trustee having control over the entire resources in the State. Hence, the Doctrine of Public Trust will apply to the lands and other resources under the control of the State and the State is required to maintain them for the reasonable use of the public. The Public Trust Doctrine serves two purposes. It mandates affirmative action for effective management of resources and empowers citizens to question ineffective management of natural resources. It is a common law concept researched upon and established by United Nations and United States and India. Various common properties; including rivers, the seashore and the air are those whose trusteeship is held by government authorities for the uninterrupted public use. Additionally sovereign should also be

careful while allocating and transferring these resources in a manner that it does not interfere with public interest. The doctrine combines the guarantee of public access to public trust resources with a requirement of public accountability in respect of decision-making regarding such resources. Moreover, not only can it be used to protect the public from poor application of planning law or environmental impact assessment, it also has an intergenerational dimension. The Public Trust Doctrine can also be used as leverage during policy deliberations and public scoping sessions and hearings. This forces agencies to prove that their actions are not harmful to the extent that they will destroy a public resource. If the agencies fail to provide a more benign alternative, such act can be questioned by a law suit..

31) It is the duty of the State to protect the natural resources and the land within the State for the benefit of the public reasonable use and cannot alienate the same as it likes to the department or public at large. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters, land and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. While dealing with such resources, the State must act fairly without causing any detriment to the public at large. Therefore, while dealing with such resources like air, sea, waters, land and the forests that vested in the Government, the same cannot be alienated as a matter of course, due to its political policy or otherwise. The Apex Court,

time and again reiterated the obligation of the State as to how the resources can be dealt with while dealing the power of the Court in writ petitions to interfere with the actions of the State.

32) While dealing with the power of the Court in writ petition to interfere with the actions of the State, the Supreme Court held that, what needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State. There cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions de hors an invitation or advertisement by the State or its agency/instrumentality. By entertaining

applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution. (vide **Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh**[1]).

33) The Apex Court in **Centre for Public Litigation and others v. Union of India**[2]**,** popularly known as '2G Spectrum case' held that, when a policy decision to alienate/allocate natural resources is not backed by a social or welfare purpose, and precious and scarce resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are held arbitrary to face wrath of Article 14 of the Constitution of India. The Supreme Court further held that, disposal of State largesse/natural resources by rightful and prudent choice of action pro-assure maximisation of revenue. When natural resources are made available by State to private persons for commercial exploitation, exclusively for their individual gain, State's endeavour must be towards revenue maximisation. Validity of a trading agreement executed by State has to be judged by the test that entire

[1] (2011) 5 Supreme Court Cases 29
[2] (2012) 3 SCC 1

benefit arising therefrom ensures to State, and is not used as a cloak for conferring private benefits to a limited class of persons.

34) In **Provash Chandra Dalui v. Biswanath Banerjee**[3], the Supreme Court while dealing with mining leases renewal and extension, has drawn distinction between 'extension' and 'renewal' and observed that, chiefly in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Finally, the Apex Court arrived at a conclusion that, mining leases cannot be granted as a matter of routine.

35) The Government is the custodian of the public property and the Government cannot allot the property to whomsoever they like on account of political affiliation or patronage, since, it would cause substantial loss to the public at large i.e. State. The Constitutional Bench of the Supreme Court in ***Re:Special Reference No.1 of 2012***[4] referred the Doctrine of Public Trust.

36) At the same time, The Apex Court in **Centre for Public Litigation and others v. Union of India** (referred supra), while dealing with allocation of natural resources and distribution of State largesse/Government contracts held that, First-Come-First-Serve (FCFS) is based on sheer chance and is therefore per se unfair. It is

[3] 1989 SCR (2) 401
[4] (2012) 10 SCC 1

also susceptible to manipulation, favouritism and misuse by unscrupulous persons and wherever a contract is to be awarded or a license is to be given, public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum, etc., it is burden of State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest. A duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden. While transferring or alienating natural resources, State is duty-bound to adopt method of auction by giving wide publicity so that all eligible persons can participate in the process.

37) In **Manohar Lal Sharma v. Principal Secretary and others**[5] mining of coal and all allocations of coal blocks by Central Government was challenged before the Court by Mr. Manohar Lal Sharma. The Apex Court by invoking Doctrine of Public Trust, cancelled the allotment of Coal Blocks.

38) If, these principles are applied to the present facts of the case, allotment of land of an extent of 1 cent as per amended scheme to the Below Poverty Line people of various districts under the

[5] (2014) 9 Supreme Court Cases 614

programme 'Navaratnalu – Pedalandariki Illu' vide G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 is nothing but alienation of the property to an individual. G.O.Ms.No.367 dated 19.08.2019 prescribes certain guidelines for distribution of house sites. Guideline No.2 deals with size/extent of house site pattas in Rural and Urban Areas. Guideline No.5 deals with Eligibility for identification of eligible beneficiaries in Rural and Urban Areas, which are as follows:

**5. ELIGIBILITY:**

The following eligibility conditions are to be strictly adhered to for identification of eligible beneficiaries.

**A) Rural Area:**

i. The beneficiary shall belong to the identified Below Poverty Line (BPL) category household having white ration card.

ii. The beneficiary shall not have an own House/House Site anywhere in the State of Andhra Pradesh. T

iii. The Beneficiary shall not have been covered in any previous Housing Scheme of the State/Central Government.

iv. The Beneficiary shall not have more than Ac.2.5 cts of Wet Land or Ac.5.00 cts of Dry Land.

v. The beneficiary shall possess an valid Aadhaar Card. Aadhaar details shall be collected only with the consent of beneficiary

**B) Urban Area:**

i. The beneficiary shall not have an Own House/House Site anywhere in the State of Andhra Pradesh.

ii. The beneficiary shall not have been covered in any previous Housing Scheme of the State/Central Government.

iii. The beneficiary shall not have more than Ac.2.5 cts of Wet Land or Ac.5.00 cts of Dry Land.

iv. The Annual Income (from all the sources) of the Household should not exceed Rs.3,00,000/- (Rupees three lakhs only).

v. The beneficiary shall possess an valid Aadhaar Card. Aadhaar details shall be collected only with the consent of beneficiary.

39) Method of selection of eligible beneficiaries is prescribed under Guideline No.6 and Guideline No.7 deals with Identification of Lands and they are extracted hereunder for better appreciation of the case:

**6. METHOD OF SELECTION:**

a) The Applications shall be invited at Village/Ward Level considering village/town as a unit respectively.
b) All applications shall be enquired by the Village/Ward Volunteers for adherence to the eligibility conditions.
c) The draft List of identified eligible beneficiaries shall be published at Village/Ward Secretariat calling for further claims & objections.
d) Grama/Ward Sabha shall be conducted to finalise the list of beneficiaries duly redressing the claims & objections.
e) The final list of beneficiaries shall be submitted for approval of the District Collector by the Tahsildars and Municipal Commissioners in the Rural and Urban areas respectively.
f) The final list of beneficiaries approved by the District Collector shall be published in the respective Village/Ward Secretariat.
g) In case of any further claims or objections, the Tahsildar/Municipal Commissioner shall function as the redressal officer duly taking approval from the District Collector.

**7. IDENTIFICATION OF LANDS:**

The District Collectors shall identify:

a) All available Government lands,
b) Lands under the possession of Government institutions/ corporations and other Government bodies which are far beyond

their requirement, considering that the said lands are suitable for providing house sites shall be resumed as per procedure,

c) Land parcels falling under category of Ceiling Surplus lands, Inam lands, Estate Lands and LTR lands involved in minor litigations which can be resolved & resumed within few months,

d) Lands available in the industrial parks developed by APIIC which are suitable for House sites/ Housing Units shall be utilised for industrial labour,

e) Lands that can be made available under land pooling scheme,

f) Eligible Beneficiaries possessing Own Sites in GramaKantam shall be identified for construction of Houses by issuing possession certificates,

g) House sites issued previously by various departments that remain unutilized and kept vacant without construction of houses shall be identified for this purpose and resumed following due procedure.

h) The District Collectors shall identify land owners who are willing to donate their lands for this noble cause i.e. housing programme for needy homeless people in the society.

i) The District Collectors are instructed to take up land acquisition either by purchase through negotiation or through compulsory acquisition as a last resort after exhausting all other possibilities.

j) The Assigned lands shall be resumed for this purpose only in rare cases when no other alternative land is available. The compensation shall be paid as per guide lines issued in G.O.Ms.No.259, Revenue (ASSN.I) Department, Dt:21-06 2016.

40) The land that can be made available under the Land Pooling Scheme can also be identified for alienation of the land to the Below Poverty Line people. But, there is a difference between grant of patta under B.S.O. 21 and alienation as per G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020. The alienation cannot be equated with an assignment under B.S.O 21. When once the Government proposes to alienate the land by executing a deed of

conveyance, collecting registration fee and stamp duty, with a clause permitting them to alienate the same after five years, creates any amount of suspicion *prima facie* and it is far from fair disposal of the land. If the Government intends to alienate the Government land, which is within its domain, the procedure laid down in various judgments referred above is to be followed. Instead of following such procedure, the State invented a separate procedure of alienation by executing a deed of conveyance permitting the beneficiaries to alienate the property after five years by collecting the stamp duty and registration fee. Hence, the procedure being adopted by the State for alienation of the Government largesse is contrary to the law laid down by the Hon'ble Apex Court in various judgments referred above *prima facie*. On the other hand, the State has no power of disposal of the land that vested in it, in view of Section 130 of the Act, 2014, though the lands are vested in it under Section 57(2) of the Act. Therefore, we find *prima facie* that the State has no power to dispose of the land that vested in it under Section 57(2) of the Act, *prima facie*, and that the procedure being adopted by the State Government for alienation of the land in the guise of 'Navaratnalu – Pedalandariki Illu' flagship programme which is one of the promises in the political manifesto of the party in power, by executing deed of conveyance giving relaxations, and collecting Rs.20/- (Rs.10/- towards cost of stamp paper and Rs.10/ towards lamination charges from the beneficiary, with a clause permitting them to alienate the land after expiry of five years is *prima facie* contrary to the law laid down by the Hon'ble Apex Court in various judgments.

41) Learned Advocate General mainly contended that, the Act is a complete code by itself, as several rules were framed under the Act and regulations were framed under the Act. Learned Advocate General mainly relied on Section 53(1)(d) of the Act, which enables the State to reserve atleast five percent of total area of the scheme for providing affordable housing for the poor. To, provide such housing for the poor, Amaravati Land Allotment Regulations, 2017, were framed vide G.O.Ms.No.229 Municipal Administration and Urban Development (CRDA-2) dated 15.06.2017. The main object to frame the Regulations is to give effect to the provisions of the Act or the Rules framed under the Act. As such, the Regulations are framed by Capital Region Development Authority with the previous approval of the Andhra Pradesh State Government, prescribing in detail the methodology and procedure for allotment of land.

42) Learned Advocate General has drawn attention of this Court to Regulation No.2(1)(d), which enables the State to provide housing for economically weaker sections, as identified by the Government of Andhra Pradesh or Government of India from time to time. But, who are economically weaker as used in Regulation No.2(1)(d) is different from the language used in Section 53(1)(d) of the CRDA Act, where the word “poor” is mentioned specifically. The word “poor” is different from “economically weak”. Therefore, Regulation No.2(1)(d) cannot be equated with Section 53(1)(d) of the CRDA Act, in view of the subtle distinction between poor and economically weak.

43) Definition of the word "poor" from various dictionaries is defined as follows:

1. Dictionary.com – "***having little or no money, goods, or other means of support".***
2. Oxford – ***"lacking sufficient money to live at a standard considered comfortable or normal in a society***".

44) The Ministry of Housing and Urban Poverty Alleviation, Government of India issued Operational Guidelines for the scheme Pradhan Mantri Awas Yojana (Urban) in January, 2017, where, "Economically Weaker Section (EWS) households" are defined as households having an annual income upto Rs.3,00,000/- (Rupees Three Lakhs only).

45) Hence, while referring to Regulation No.2(1)(d), the learned Advocate General contended that the State intended to allot the land to the poor, which is contrary to the Statutory provision i.e Section 53(1)(d) of the Act. The eligibility criteria for allotment of such land is the procedure to be followed as mentioned in G.O.Ms.No.488 dated 02.12.2019 and G.O.Ms.No. 367 dated 19.8.2019 and its annexure thereto. Thus, G.O.Ms No. 488 dated 02.12.2019 and annexure to G.O.Ms.No. 367 dated 19.8.2019 fixed the following eligibility to claim benefits under the G.Os.

**5. ELIGIBILITY:**

The following eligibility conditions are to be strictly adhered to for identification of eligible beneficiaries.

**A) Rural Area:**

i. The beneficiary shall belong to the identified "***Below Poverty Line (BPL)***" category household having white ration card.
ii. The beneficiary shall not have an own House/House Site anywhere in the State of Andhra Pradesh. T
iii. The Beneficiary shall not have been covered in any previous Housing Scheme of the State/Central Government.
iv. The Beneficiary shall not have more than Ac.2.5 cts of Wet Land or Ac.5.00 cts of Dry Land.
v. The beneficiary shall possess an valid Aadhaar Card. Aadhaar details shall be collected only with the consent of beneficiary

**B) Urban Area:**

i. The beneficiary shall not have an Own House/House Site anywhere in the State of Andhra Pradesh.
ii. beneficiary shall not have been covered in any previous Housing Scheme of the State/Central Government.
iii. The beneficiary shall not have more than Ac.2.5 cts of Wet Land or Ac.5.00 cts of Dry Land.
***iv. The Annual Income (from all the sources) of the Household should not exceed Rs.3,00,000/- (Rupees three lakhs only).***
v. The beneficiary shall possess a valid Aadhaar Card. Aadhaar details shall be collected only with the consent of beneficiary.

46) No ceiling on annual income for the beneficiary in Rural Areas is fixed, but only the ceiling on holding of agricultural land, wet and dry is fixed specifying that beneficiary shall not have more than Ac.2-5 cts of Wet Land or Ac.5-00 cts of Dry Land, but, did not specify the other classes of persons like businessmen, etc., who are eligible for such benefits. However, in Rural Areas, the beneficiary should be a **"Below Poverty Line (BPL)"** category having household supply card. Therefore, the Below Poverty Line (BPL) persons are only eligible for such allotment in Rural Areas. Whereas, in Urban Areas, no such restriction is imposed, and the annual income of the household/beneficiary to be identified should not exceed

Rs.3,00,000/- (Rupees three lakhs only). If, that is the case, certain categories like artisans viz, weavers, potters and blacksmiths will also be entitled to claim such benefit.

47) At this stage, it is relevant to refer to the instructions in G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019 and they are as follows:

i. The eligible beneficiary shall be given House site once in a life time.
ii. Wherever possible individual plot of an extent of 1 cent (Ac.0.01 cent) shall be provided instead of flats in urban areas, thus accommodate 55 plots per acre.
iii. Construction of flats (G+3) shall be taken up wherever adequate land is not available.
iv. Those families eligible for ration cards but not yet been issued shall also be included in the list of eligible beneficiaries for house sites. In respect of all such cases Mee-Seva Income Certificate is mandatory.
v. Encroachers in objectionable government lands shall be evicted immediately after giving house sites in the present scheme.
vi. Requisition shall be filed by Tahsildar with District Collector furnishing the details of the Government land available for House sites and balance land required.
vii. Established norms prescribed by UDAS, ULBs, DTCP in preparation of layout shall be strictly followed.
viii. Standard Design for Housing units shall be prepared by Housing / MA & UD Departments.
ix. Plots shall be linked with Aadhar / Ration card so as to avoid duplication of beneficiaries and the data base shall be maintained for future purposes also.
x. The present house site allotment is treated as concessional allotment and not an free assignment.
xi. Accordingly, Plots shall be allotted duly collecting Rs.20/- (Rs.10/- towards cost of stamp paper and Rs.10/- towards

lamination charges) from the beneficiary. Plot allotment certificate (Patta) shall be issued on free hold basis with a lock-in period of 5 years for sale purpose from the date of issue of allotment order.

xii. After completion of 5 years period, in case of personal exigency, beneficiary can sell the plot and sub-registrar shall honour for registration without any NOC from any department whatsoever. However the beneficiaries will not be entitled for house site once again, and are debarred permanently.

xiii. The house site is a bankable document and bank loan can be raised at any time.

xiv. Beneficiaries list prepared shall always be displayed in ULBs / Gram Panchayats and whenever there are changes, the same shall also be displayed.

xv. Beneficiaries list in urban areas shall be shared with Andhra Pradesh Township and Infrastructure Development Corporation (APTIDCO) to accommodate them in various housing schemes.

48) Learned Advocate General relied on Additional Guideline Nos. (x) & (xi) of G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019 to contend that the allotment is only on concessional basis and not a free assignment and this is intended only to fulfil the object of the Act by providing housing to the poor in terms of Section 53(1)(d) of the Act.

49) However, Guideline No.(xii) directed the sub-registrars to honour the registration without any NOC from any department whatsoever, in case of personal exigency, after completion of five years period. However, the Government is permitting the beneficiaries to sell the land allotted to them, where the intention is to provide

housing to the poor. If they are allowed to sell the land/property after five years, the poor will remain poor forever. The Guideline Nos. (ix), (x) & (xii) impede or defeat the very object of allotment of house sites to the poor at free of cost, since the object is to provide basic amenities like food and shelter to every poor person in the State. But, permitting the poor allottees to sell the property after five years will again drive them into poverty, thereby denying them to claim other future benefits to remain as homeless poor though their life.

50) Learned Advocate General has also drawn attention of this Court to Amaravati Land Allotment Regulations, 2017, for limited purpose of permitting the State to allot land for housing to the poor. A bare look at the entire scheme of Amaravati Land Allotment Regulations, 2017, shows that the State cannot allot such land under the regulations at its whim and fancy, in view of the guidelines fixed for allotment of land under Regulations.

51) Guideline No.3.1.1 obligates the Capital Region Development Authority to constitute ***"Land Allotment Scrutiny Committee (LASC)***". According to Guideline No.3.1.2, the Land Allotment Scrutiny Committee (LASC) shall consist of an Additional Commissioner (dealing with the subject) as Chairman and the heads of: Finance & Accounts, Engineering, Planning, Estates and Economic Development and shall be constituted by a Standing Order of the Authority. According to Regulation No.3.1.3, the Committee shall make its recommendations to the Commissioner for his consideration on various aspects as envisaged in Regulation 4. The

Role and Responsibilities of Land Allotment Scrutiny Committee (LASC) are prescribed under Regulation No.3.1.4 According to Regulation No.3.1.4.1.1, Land Allotment Scrutiny Committee (LASC) shall Assess the land available with the Authority and list out the area wise, zone wise lands to be allotted in the next 1 year/5 years/10 years from the date of notification of these Regulations and earmark them for different purposes of allotment. According to Regulation No.3.1.4.1.2 of Land Allotment Scrutiny Committee (LASC) shall Identify lands to be reserved for a successive period of ten (10) years from the date of notification of these Regulations for the purpose of achieving monetization at a future date.

52) Regulation No.3.2 of Land Allotment Scrutiny Committee (LASC) prescribed process to be followed for allotment of land. Similarly, Regulation No.4 of Land Allotment Scrutiny Committee (LASC) prescribed the objectives of Land Allotment and they are extracted hereunder for better appreciation:

> **4.1 Authority shall allot land for the following objectives or any combination of the same:**
>
> 4.1.1 Revenue maximization: The objective is to maximize income to the Authority through land allotment.
>
> 4.1.2 **Economic Development:** The objective of allotment for economic development is to maximize investments, job creation and value addition at the city level. Such allotments have positive externalities which enhance the land value of adjacent lands belonging to the Authority. Examples include corporate offices, business parks, banks, financial institutions, etc. The

Authority may issue Standing Orders detailing the possible types of Allottees under this category.

4.1.3 **Social Development:** The objective of allotment for social development is to create a liveable environment, facilitate socio-cultural development and provide public services/facilities such as health, education, etc. In this context, commercial exploitation of land is not the primary focus of land use and the determining factors would be the number of people impacted and the liveability standard. As a result, the allotment is done on concessional terms. Examples include affordable housing, not-for-profit health and educational institutions, socio-cultural organizations, etc. The Authority may issue Standing Orders detailing the possible types of Allottees under this category.

4.1.4 **Infrastructure and Public Utilities:** The objective of allotment in this case is to develop essential infrastructure needed for a capital city and for the provision of public utilities such as water, sewerage treatment plans, power supply, roads, post offices, police stations, etc. The potential Allottees
under this method are:

4.1.4.1 Public utility players such as Andhra Pradesh Power
Generation Corporation.

4.1.4.2 Private players in the public utilities space.

53) The objective of allotment for social development prescribed under Regulation No.4.1.3 is to create a liveable environment and allotment must be done on concessional terms. But, the regulation did not prescribe allotment of house sites at free of cost. Though Regulation No.4.1.3 permits allotment of ***"concessional terms"***, the State intended to allot the land at free of cost, vide Guideline Nos. (xi) of G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department

dated 02.12.2019, which is extracted above. But, Clause (x) of the said G.O says that, the allotment shall be treated as concessional allotment, but not a free assignment. When the State is not collecting any amount towards price of the land proposed to be allotted while collecting Rs.20/- (Rs.10/- towards cost of stamp paper and Rs.10/- towards lamination charges) from the beneficiary, it cannot be termed as allotment on concessional rate, on the other hand it is free allotment. Therefore, Guideline No.(xi) is not in consonance with the objective of land allotment as per Regulation No.4.1.3, *prima facie.*

54) Regulation No.5 deals with pricing, it is the obligation of the Land Allotment Scrutiny Committee (LASC) to determine the base price for such land allotment and it reads as follows:

**5.1 Base Price and its Determination**

**5.1.1 Base Price** of the Land or any parcel of land or of any Plot shall be determined in the following manner.

**5.1.2** Initially the Base Price may be declared for the entire Land in Amaravati Capital City Area or for a larger portions of land in Capital Region. However, as the differential development takes place, the Base price shall be progressively declared for smaller areas in the Amaravati Capital City or Capital Region reflecting

i) similar level of infrastructure and development, or
ii) grouped according to the location.

**5.1.3** If the Base Price is fixed for the entire Amaravati Capital City Area then it shall be the sum of the following costs divided by the net saleable area under different uses as per the Master Plan.

**5.1.3.1** Land Procurement Price which shall be the costs of land pooling scheme including the cost of acquisition, relief and rehabilitation costs, proportionate cost of Tier 1 infrastructure and full cost of the Tier 2 infrastructure for the area of the land to be returned to original owners.

**5.1.3.2** Balance cost of the Tier 1infrastructure.

**5.1.3.3** Full cost of the Tier 2 infrastructure in the non-returnable area.

**5.1.3.4** Establishment and Administrative costs.

**5.1.3.5** The financing costs.

**5.1.3.6** Miscellaneous Costs such as legal fees incurred by the Authority towards the implementation of the Act, Rules or these Regulations.

**5.1.4** If the Base Price is fixed for specific parcels of land within the Amaravati Capital City Area then it shall be the sum of following costs divided by the net saleable area of that particular parcel of land.

**5.1.4.1** Land Procurement Price which shall be the costs of land pooling scheme including the cost of acquisition, relief and rehabilitation costs, proportionate cost of Tier 1 infrastructure and full cost of the Tier 2 infrastructure for the area of the land to be returned to original owners.

**5.1.4.2** Proportionate cost of the Tier 1 infrastructure in the said parcel of land.

**5.1.4.3** Full cost of the Tier 2 infrastructure in the said parcel of land.

**5.1.4.4** Establishment and Administrative costs.

**5.1.4.5** The financing costs.

**5.1.4.6** Miscellaneous Costs such as legal fees incurred by the Authority towards the implementation of the Act, Rules or These Regulations.

**5.1.5** In case of 4.1.4 above, there shall be different Base Price for different parcels of land, due to the existing or proposed differential levels of the infrastructure.

**5.1.6** In case of phased allotment of land, only tier2 infrastructure which will be provided by the Authority for subsequent parcels of land shall be included in the computation of Base Price.

**5.1.7** The Base Price may be revised by the Authority from time to time.

**5.2 Reserve Price and its Determination**

5.2.1 The Authority may from time to time declare the Reserve Price for the land in the Amaravati Capital City Area for different types of uses of land.

5.2.2 Reserve Price shall be determined with due reference to:

5.2.2.1 The type of use of the land.

5.2.2.2 Premium location of the land; if any

5.2.2.3 The Base FSI for the land.

5.2.2.4 Any other criteria to be decided by the Authority from time to time.

5.2.3 Reserve Price shall be determined as per the prescribed procedure and/or guidelines by the Land Allotment Scrutiny Committee and approved

by the Authority from time to time. The approved Reserve Price shall be issued in the form of a Standing Order of the Authority.

55) In the present facts of the case, no Land Allotment Scrutiny Committee (LASC) was constituted in terms of Regulation No.3 and no base price is determined for such land allotment in terms of Regulation No.5, but the Government intended to allot the land as free hold without collecting any amount. Such allotment of land at free of cost is contrary to Regulation No.5 *prima facie*.

56) Regulation No.6 deals with methods of allotment and selection. According to Regulation No.6.1.1, allotment of land shall be made by the method of freehold/leasehold for land allotted for residential and commercial uses. According to Regulation No.6.2, in case of a public auction/tender, the Authority shall cause a Public Notice to be issued as provided in the Act.

57) According to Regulation No.6.2.1, Conditions of the Auction / Tender; the auction/tender shall be subject to the following general conditions in addition to any other specific conditions which may be announced on a case to case basis. According to Regulation No.6.2.2, Every individual/entity who intends to participate must submit an earnest money deposit (EMD) which shall not be less than Five percent of the reserved price (in case of auction) and not less than Ten percent of the reserved price (in case of tender). Regulation No.6.2.3 says that the accepted Bid shall not be less than the Reserve Price or the Upset Price as may be determined by the

Land Allotment Scrutiny Committee (LASC). According to Regulation No.6.2.4, the Authority shall have the right to reject the highest Auction Bid or the highest Tender Bid without assigning any reasons thereof and Regulation No.6.2.5 says that, The balance amount being the difference between the Auction Bid amount and the EMD, shall be paid in two instalments as provided in these Regulations.

58) The other method of allotment of land is prescribed under Regulation No.6 which deals with Quality cum method of allotment of land is Quality cum Price Based Selection, on application and/or by Nomination and randomized selection. Final approval of allotment of shall be made at the level mentioned in the table contained in Regulation No.6.7.1 and reads as follows:

| **Sr.No** | **Method of Allotment** | **Criteria** | **Approving Authority** | **Remarks** |
|---|---|---|---|---|
| **(1)** | **(2)** | **(3)** | **(4)** | **(5)** |
| 1 | Public Tender/Auction including | Selection through approved process and or when the land area is not more than 10 acres | Commissioner | Provided the bid/s price is equal to or more than RP; otherwise the Executive Committee |
| | | • Any deviation in Selection process irrespective of area<br>• Negotiations<br>• Or Land area more than 10 acres and up to 100 acres | Executive Committee | |
| 2 | Quality cum Price Based Selection | Selection through approved process and or when the land area is not more than 10 acres | Commissioner | Provided the bid/s price is equal or more than RP otherwise Authority |

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|---|---|---|---|---|
| | | • Any deviation in Selection process irrespective of area<br>• Negotiations<br>• Or Land area more than 10 acres and up to 100 acres | Authority | |
| 3 | Quality Based Selection | Area up to 10 Acres | Authority | |
| | | Area more than 10 Acres | Government | |
| 4 | On Application/ Nomination | Applicants under the category mentioned under Regulation 6.5.1.1 up to extent of land earmarked in the notified Master Plan/ Development Plan | Executive Committee | |
| | | • Applicants under the category mentioned under Regulation 6.5.1.1 in case of deviation from the notified Master Plan and upto 100 Acres<br>• Applicants under the category mentioned under Regulation 6.5.1.2 and 6.5.1.3 and up to 100 acres | Authority | |
| | | Applicants under the category mentioned under Regulation 6.5.1.4 and 6.5.1.5 | Government | |
| 5 | Randomized Selection | Selection through approved process and or when the land area is not more than 10 acres | Commissioner | Provided the bid/s price is equal to or more than the RP; otherwise the Executive Committee |
| | | • Any deviation in Selection process irrespective of area<br>• Negotiations<br>• Or Land area more than 10 acres and up to 100 acres | Executive Committee | |

59) Learned Advocate General contended that, based on the Regulations referred above, the land is being allotted. But, in our view, the State *prima facie* failed to follow the procedure provided under the Regulations which are referred in the earlier paragraphs.

60) The Regulations never permitted the State to allot the land at free of cost, but, on overall reading of various regulations referred above, the power is vested with the Capital Region Development Authority on recommendation of Land Allotment Scrutiny Committee (LASC) for various purposes referred above. Therefore, the State has no role and only the Additional Commissioner or the Land Allotment Scrutiny Committee (LASC) or the Capital Region Development Authority is competent to approve the allotment, except in case where the allotment was made on quality based selection for an area more than 10 Acres (vide Sr.No.3, Column No.3 of the table mentioned above).

61) In the present facts of the case, no such procedure is admittedly followed, no base price is fixed for allotment of land towards house sites either to the poor or weaker sections. Hence, the procedure prescribed by the State vide G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019; G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019, is *prima facie* contrary to the Regulations.

62) The proposed amendment by constituting different committees prescribing procedure vide Guideline No.(viii) of G.O.Ms.No.367

Revenue (Assignment-I) Department dated 19.08.2019 for providing house sites, prescribing the Members of Monitoring Mechanism under Guideline No.16 (a), (b) & (c) is totally contrary to the Regulations mentioned above. Even otherwise, the guidelines prescribed under G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 or G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019, are issued for allotment of house sites without fixing any base price as provided under the Regulations referred above and providing ***"house sites"*** which is not provided under Section 53(1)(d) of the Act or Regulation No.4.1.3.

63) Yet, another *prima facie* lacuna in the procedure being followed for allotment of house sites/housing to the poor is that, failure of the Authority to follow any of the methods of allotment narrated above. In case, the Authority i.e Capital Region Development Authority intends to allot the land and select the beneficiaries, the Authority has to follow anyone of the methods contemplated under Regulation No.6 referred above. But, the State intends to exercise power over the lands and allot the same to economically weaker section or poor, fixing various standards to the beneficiaries to be selected, both in Urban and Rural Areas. Since the State has no role in such allotment as per the Regulations, exercising power to take over the land and allot the same to the poor or weaker sections is a *prima facie* illegality. Even in the absence of any Regulation, the method to be followed when the Government wanted to part with a largesee is by conducting public auction.

64) One of the contentions urged by the learned counsel for the petitioner Sri Karumanchi Indraneel Babu in W.P (PIL) No.42 of 2020 is that, very allotment of the land at free of cost, reducing lock-in period to five years is contrary to the provisions of A.P.Act IX of 1977. There is a distinction between assignment and allotment of either house sites or agricultural lands to the landless poor under the Land Allotment Policy vide G.O.Ms.No.571 Revenue (Assignment-I) Department dated 14.09.2012 and B.S.O 21 of A.P. Board Revenue Board Standing Orders, consisting two different provisions for assignment of house sites in villages and towns, but, whereas, allotment of land under land allotment policy is totally different from B.S.O 21. In the event of assignment of house site either in village or in town, the Government used to impose a lifetime ban on alienation of the property. But now, it is reduced from 20 years to 5 years. In relaxing the condition from twenty years to five years, while imposing restriction of five years for sale after alienation of the land by issuing patta (G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019), sale of such land/site after five years which was allotted on the ground that the beneficiary is poor or belonging to economically weaker section, would defeat the very purpose of providing housing to the poor or economically weaker section, as they are not entitled to claim such benefit under any scheme throughout their lifetime. On account of granting permission to sell their lands after five years from the date of allotment, while dis-entitling them to claim such benefit, is nothing but indirectly allowing such poor or

economically weaker sections to remain as houseless poor throughout their lifetime. Moreover, as per G.O.Ms.No.367 MA & UD Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.107 MA & UD (CRDA-2) Department dated 25.02.2020, the lock-in period is only five years, but the State is collecting Rs.20/- (Rs.10/- towards cost of stamp paper and Rs.10/- towards lamination charges) from the beneficiary by way of grant in favour of either poor or economically weaker sections. The amount, the State is proposing to collect, is not sale consideration. Therefore, the allotment of house sites under the Land Allotment Policy is only a grant at free of cost in favour of the poor or economically weaker sections. Normally, the Government will assign the land issuing pattas only in respect of "Grama Natham" which are known as "cheap lands".

65) "Grama Natham" can be defined as land upon which houses can be built in a village. This was used to differentiate sites for development from government-held land such as Inam land (gift land), Ryotwari land (land belonging to the actual cultivator, but currently not in practice), Pannai land and Waste land. Grama Natham is not a property of the government, but belongs to the village panchayat on which houses can be built for residential purposes by those living in the villages. Typically, Grama Natham land does not a have a sale deed or parent deed. In Grama Natham, the first occupier of the land is considered the rightful owner, and generally, a Patta is issued on an application from its first occupier.

Poramboke land is often compared with Grama Natham. “Poram” means outside, and “boke” means revenue record. Hence the word, poramboke, can be defined as land which lies outside revenue records. By such a definition, any piece of land can be classified either as a privately-owned Patta land, Government Poramboke land or Grama Natham land. Although Grama Natham can be used for building a house, there is always a risk of litigation when the government needs the land for its projects. If the Natham is unoccupied, it will be classified as a Poramboke Natham. Where such Poramboke Nathams are concerned, the government acts as a custodian, and may allocate the piece of land to an individual.

66) Whereas, in the present case, the land pooled will not fall within Grama Natham land, since the Government incurred substantial amount for pooling of land. Even otherwise, it was agricultural land earlier i.e. private patta land and after pooling, it was converted into different zones like residential, industrial, commercial or agricultural purpose; open spaces, parks and gardens, green-belts, zoological gardens and playgrounds; public institutions and offices and other special purposes under Section 38 of the Act. The land proposed to be allotted cannot be treated as Grama Natham land to assign the same under B.S.O 21. However, assignment need not be at free of cost, but, sometimes, the State is collecting amount towards consideration for assignment.

67) Assignment under B.S.O 21 would not fall within the Land Allotment Policy. When the Authority under the Act, reserved atleast

five percent of total area of the scheme for providing affordable housing for the poor, such lands must be allotted for affordable housing to poor. But, such allotment is subject to the Act, 2014; Land Pooling Scheme Rules, 2015 and Amaravati Land Allotment Regulations, 2017. Giving go-bye to those Regulations, as discussed in the earlier paragraphs, the Government issued G.O.Ms.No.367 MA & UD Revenue (Assignment-I) Department dated 19.08.2019, G.O.Ms.No.107 MA & UD (CRDA-2) Department dated 25.02.2020 and G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019 to allot the lands to the economically weaker sections and not to the poor, the word 'poor' is different from 'economically weaker sections' as discussed above.

68) Though the land is reserved for providing affordable housing to the poor, contrary to that, the State alienated the lands to economically weaker section people, subject to the guidelines issued in G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 fixing certain eligibility for identification of eligible beneficiaries in Rural and Urban Areas. G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 *prima facie* appears to be contrary to the intention of the Legislature in reserving five percent land pooled area for the affordable housing for the poor. Economically weaker sections would not fall within the definition of 'poor'.

69) Learned Advocate General contended that the assigned land cannot be alienated, in view of Section 3(2) of Act IX of 1977.

But, the lifetime ban is reduced to 20 years and whereas, such restriction on alienation when land is allotted is only 5 years, as per Guideline No.(xii) of G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019. Therefore, the provisions of A.P.Act IX of 1977 have no application.

70) Learned Advocate General has relied on judgment of the learned Single Judge of this Court in ***M/s Sudalagunta Sugars Limited., v. The Joint Collector, Chittoor and another***[6] to contend that, when there is a complete ban on alienation, provisions of A.P Act IX of 1977 are applicable and when restriction is lifted, the provisions of A.P Act IX of 1977 are not applicable.

71) On account of lifting of lifetime ban, permitting the beneficiaries under the assignment to alienate the property after 20 years, in view of the amendment to Act 9 of 1977, Act 9 of 1977 cannot be applied, as it would be on par with alienation covered by Land Allotment Policy vide G.O.Ms.No.367 MA & UD Revenue (Assignment-I) Department dated 19.08.2019. The Land Alienation Policy is totally different from the allotment as per Board Standing Orders for grant of assignments and A.P Act IX of 1977 will have no application to the grant in favour of economically weaker sections as affordable housing under the Land Allotment Policy. Hence, we find no substance in the contention of the learned counsel for the petitioner, Sri Karumanchi Indraneel Babu *prima facie*.

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[6] (2017) 2 ALD 529

72) In the same writ petition, W.P. (PIL) No.42 of 2020, learned counsel for the petitioner, Sri Karumanchi Indraneel Babu vehemently contended that, as per the Master Plan, the area is divided into various regions i.e. R-1, R-2, R-3 & R-4 and specified minimum plot and size under different categories. The minimum plot size under R-1 category is 100 square meters and Master Plan and Zonal Regulations are notified in the month of February, 2015, dividing different areas, fixing rates, width etc and it is in force as on date. But, the State now proposed to allot only one cent in Urban Areas and 1 ½ in Rural Areas. One cent is equal to 48.4 square yards and 100 square meters is equal to 119.599 square yards. When there is a restriction on minimum allotment of house site or plot of land under Zonal Regulations framed under Sections 38 & 39, they are deemed to be continuing till they are modified. Hence, proposed alienation of one cent of land within Amaravati Capital City Area is contrary to the Zoning Regulations, *prima facie* and it defeats the very purpose of fixing minimum plot size depending upon the region.

73) Section 38 of the Act obligates the authority to prepare development plans for the capital region and Section 39 of the Act deals with process of approval of plans. The Zonal Regulations and the Master Plans were prepared exercising power under Section 38 and approved by exercising power under Section 39 of the Act. Till those master plans and regulations are modified, they are deemed to be in force.

74) After the coming into operation of the perspective plan or master plan or infrastructure plan or land pooling scheme or town planning scheme or any area development plan in an area, formulated under the provisions of the Act, no person or body shall use or permitted to use any land or carry out any development in that area unless the development is in conformity with such plans, in view of the restriction imposed by the Statute i.e Section 109 of the Act. The learned Advocate General vehemently contended that notification for modification of the Master Plan, etc., is in the process and objections are called from the public. But, commencement of process to modify Master plan etc is insignificant at this stage.

75) In the present facts, the Master Plan and Development Plans were prepared as per Section 38 and approved as per Section 39 of the Act, are not yet modified and if, the allotment of land at the rate of one cent within Amaravati Capital City Area is permitted, it is totally in contravention of Section 38 and Section 109 of the Act. Hence, on this ground also, the proposed allotment at the rate of one cent to economically weaker section people towards affordable housing is in violation of statutory provisions, *prima facie*. When the proposed amendment is *prima facie* violative of statutory provision, though the land allotted is a policy matter, the Court can interfere with such policy decisions, as the decisions are contrary to the statutory provisions.

76) In "***People's Union for Civil Liberties v. Union of India***[7]" the Hon'ble Apex Court candidly held that the Court should not shirk from its duty of performing its function merely because it has political thicket. Thus, the law permits the interference of this Court if the decision taken by the Executive has political thicket.

77) Similarly, the Hon'ble Apex Court time and again held that where the decision of the authority is in regard to a policy matter, the Supreme Court will not ordinarily interfere but this does not mean that the courts have to abdicate their right to scrutinise whether the policy in question is formulated keeping in mind all the relevant facts and whether the said policy can be held to be beyond the pale of discrimination or unreasonableness, on the basis of the material on record (vide: ***Union of India v. Dinesh Engineering Corporation***[8])

78) It is true that the judicial review of the policy, evolved by the government, 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. In matters, affecting policy and requiring technical expertise the Court would leave the matters for decision of those who are qualified to address the issues. Unless, the policy or action is inconsistent with the Constitution and the laws are arbitrary, irrational and abuse of power, the Court will not interfere with such matters. (Vide: ***Federation of Railway Officers Association v. Union of India***[9])

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[7] (2003) 4 SCC 399
[8] (2001) 8 SCC 491
[9] (2003) 4 SCC 289

79) When the decision taken by the Executive is tainted by mala fide or politically motivated, the Court may interfere with such administrative decisions.

80) Though the State has every right to regulate its affairs, the manner in which the Government chooses to ascertain the factor of higher acceptability, must in the very nature of things, fall within the discretion of the Government, so long as, the discretion is not exercised mala fide, unreasonably or arbitrarily. However, the basis for determination is not only relevant but also fair. No direction can be given or expected from the Court regarding the 'correctness' of an executive policy, but if there is infringement or violation of any constitutional or **"statutory provision"**, the Court must interfere with such decision.

81) In "***M.P. Oil Extraction v. State of M.P.***[10]" the Hon'ble Apex Court observed that the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State and unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive

[10] 1997(7) SCC 592

function of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasized. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of the judiciary in out-stepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields.

82) The same view was been taken by the Apex Court in "***Ugar Sugar Works Limited v. Delhi Administration and Others***[11]" "***Bhavesh D. Parish and Others v. Union of India and Another***[12]", "***Netai Bag and Other v. State of West Bengal and Others***[13]"

83) Thus, the catena of decisions (referred above) directly

[11] (2001) 3 SCC 635
[12] (2000) 5 SCC 471
[13] (2000) 8 SCC 262

cautioned the Courts not to interfere in the policy decisions of the State unless they are tainted by mala fide and contrary to the Statute.

84) In "***Secretary of Agriculture v. Central Roig Refining Co.***[14]" Mr. Justice Frankfurter of the U.S. Supreme Court observed:

> "Congress was confronted with the formulation of policy peculiarly within its wide swath of discretion. It would be a singular intrusion of the judiciary into the legislative process to extrapolate, restrictions upon the formulation of such an economic policy from those deeply rooted notions of justice which the Due Process Clause expresses."

85) The Apex Court in "***M/s Bajaj Hindustan Ltd. vs. Sir Shadi Lal Enterprises Limited and Others***[15]" held that the judiciary should never interfere with administrative decisions. However, such interference should be only within narrow limits e.g. when there is clear violation of the statute or a constitutional provision, or there is arbitrariness in the Wednesbury sense. It is the administrators and legislators who are entitled to frame policies and take such administrative decisions as they think necessary in the public interest. The Court should not ordinarily interfere with policy decisions, unless clearly illegal. As discussed above, the decision taken by the Executive for alienation of land, which formed part of the land pooled under the provisions of CRDA Act is totally contrary to the provisions of the Act and Rules framed thereunder and Regulations, as such, the administrative decision taken by the Executive can be interfered, since it is not only violative of provisions

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[14] (1949) 338 US 604 (617)
[15] (2011) 1 SCC 640

of the Act and Rules framed thereunder, but also capricious and arbitrary.

86) Sri Ashok Bhan, learned Senior Counsel, appearing on behalf of Sri Sai Sanjay Suraneni, learned counsel for the petitioners in W.P.No.5994 of 2020 and W.P.No.5140 of 2020, Sri Karumanchi Indraneel Babu, learned counsel for the petitioners in W.P (PIL) No.42 of 2020 raised a specific contention that the land within the Amaravati Capital City Area cannot be allotted to any other outsider and an affordable housing must be provided to the villagers of Amaravati Capital City Area.

87) The land proposed to be assigned is undisputedly within the notified capital city area. Sri Ashok Bhan, learned Senior Counsel and Sri Karumanchi Indraneel Babu, learned counsel for the petitioners have drawn the attention of this Court to Section 53(1)(d) of the Act and Scheduled-II & III of the Land Pooling Scheme Rules, 2015, to substantiate their contentions. Section 53(1)(d) of the Act deals with reservation of atleast five percent of total area of the scheme for providing affordable housing for the poor. The term 'land pooling scheme' is defined under Section 2(22) of the Act, 2014, which means assembly of small land parcels under different ownerships voluntarily into a large land parcel, provide it with infrastructure in a planned manner and return the reconstituted land to the owners, after deducting the land required for public open spaces such as parks and play grounds, social housing for economically weaker sections, social amenities such as school,

dispensary and other civic amenities, road network, and other infrastructure as specified under the Act as well as such extent of land in lieu of the cost of development towards the provision of infrastructure and amenities and other costs and expenses to be incurred for the scheme and external trunk infrastructure.

88) There is a little distinction in the language used in the definition of 'land pooling scheme' under Section 2(22) of the Act, with regard to providing housing and Section 53(1)(d) of the Act. According to Section 53(1)(d) of the Act, the authority has to reserve atleast five percent of total area of the scheme for providing affordable housing for the poor. But, Section 2(22) of the Act, specifies social housing for economically weaker sections, but not to affordable housing for the poor. This inconsistency cannot be gone into at this stage, while deciding these interlocutory applications and it is a matter to be decided at the stage of final hearing, as such, there is a *prima facie* case which is required to be adjudicated at the final hearing of the petitions.

89. In view of the language used in both Section 53(1)(d) of the Act, and Section 2(22) of the Act, the provision for affordable housing to the poor or social housing for economically weaker sections within the pooled area is not restricted to the villagers covered by capital city or capital region area. Therefore, the proposed allotment of house site/land to the poor people in the villages of Nowluru, Krishnayapalem, Nidamarru, Inavolu, Kuragallu and Mandadam of Vijayawada Municipal Corporation, Tadepalli Municipality,

Mangalagiri Municipality and selected Gram Panchayats of Tadepalli, Duggirala, Mangalagiri and Pedakakani Mandals is *prima facie* not in contravention of any of the provisions.

90) In W.P. (PIL) No.49 of 2020, one of the specific contentions urged by Sri Ashok Bhan, learned Senior Counsel and Sri Dammalapati Srinivas, learned counsel appearing on behalf of Sri Ginjupalli Subba Rao is very specific that the authority may allot built-up houses, but not land and the proposal is only to allot the land, but not the built-up houses.

91) No doubt, in view of the language used in Section 53(1)(d) and Section 2(22) of the Act, the authorities have to allot houses, for the reason that the word 'social housing' or 'affordable housing' in both the provisions means built-up area or built-up accommodation.

92) Definition of the word 'housing' quoted in various dictionaries is as follows:

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|---|---|---|
| Oxford Dictionary | - | ***Houses and flats considered collectively*** |
| Cambridge Dictionary | - | ***Buildings for people to live in.*** |
| Merriam Webster Dictionary | - | **Shelter, lodging, dwellings provided for people** |

93) The word 'housing' is in consonance with Schedule-II(ii)(f) of the Land Pooling Scheme Rules, 2015. According to it, it is the Role and responsibility of the Authority towards development of the area under Land Pooling Scheme and allot the prescribed built up space/dwelling units for economically weaker sections.

94) If, Section 53(1)(d), Section 2(22) of the Act and Schedule-II(ii)(f) of the Land Pooling Scheme Rules, 2015 are read conjointly, the same specifically convey the intention of the Legislature to provide built up space/dwelling units for economically weaker sections or poor, either as affordable housing or social housing, but not as house site.

95) Learned Advocate General vociferously contended that, 'housing' includes allotment of site. The word 'house plot' is not defined anywhere in the Act or under the Amaravati Land Allotment Regulations, 2017. The word 'original plot' is defined under Section 2(29) of the Act and it means, the parcel of land extent vesting with the land owner as per revenue records. As per Section 2(21) of the Act, 'land' means land and includes benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. A 'house site' or 'house' means land for the purpose of construction of house in its restricted meaning. But the provisions obligated the authority to reserve atleast five percent of the total pooled area of the scheme for providing affordable housing for the poor or social housing for economically weaker sections, but not open space. Hence, the contention of the learned Advocate General that 'housing' includes site is not acceptable *prima facie*, for the limited purpose of deciding these petitions.

96) On the other hand, on conjoint reading of various provisions referred above, it is abundantly clear that the authority is under

obligation to allot built-up space or dwelling units either to the poor or to the economically weaker section people, but not house site(s) or plot(s). Hence, the proposed allotment of lands is *prima facie* contrary to the intention of the Legislature in incorporating Section 53(1)(d), Section 2(22) of the Act, read with Schedule-II(ii)(f) of the Land Pooling Scheme Rules, 2015. When the proposed allotment is contrary to the provisions, this Court while exercising power of judicial review under Article 226 of the Constitution of India can interfere with the administrative or policy decisions taken by the State.

97) Sri Ashok Bhan, learned Senior Counsel, in support of his contentions, placed reliance on the judgments of the Hon'ble Supreme Court in **Peerless General Finance and Investment Company Limited and another v. Reserve Bank of India**[16] and **Bhavnagar University v. Palitana Sugar Mill (P) Limited and others**[17]**,** regarding interpretation of the provisions of the Act.

98) In **Peerless General Finance and Investment Company Limited and another v. Reserve Bank of India** (referred supra), the Hon'ble Apex Court while referring to its earlier judgments in **State of U.P v. Babu Ram Upadhya**[18] and **D.K.V. Prasada Rao v. Government of A.P**[19], concluded that, rules made under a statute must be treated, for all purposes of construction or obligations, exactly as if they were in that Act and are to the same effect as if they

[16] (1992) 2 Supreme Court Cases 343
[17] (2003) 2 Supreme Court Cases 111
[18] AIR 1961 SC 751
[19] AIR 1984 AP 75

contained in the Act and are to be judicially noticed for all purposes of construction or obligations. The statutory rules cannot be described or equated with administrative directions. In **D.V.K. Prasada Rao v. Government of A.P**. (referred supra), the same view was laid down. Therefore, when the rules and regulations are made as subordinate legislation to the principal Act, they would automatically form part of the Act itself and they must be governed by the same principles as the statute itself. The statutory presumption that the legislature inserted every part thereof for a purpose and the legislative intention should be given effect to, would be applicable to the impugned directions.

99) When the statutory interdict is created for use and enjoyment of the property, such restriction must be construed strictly. It is well-settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner only and not at all in any other manner. The State and other authorities while acting under the Act are only creature of statute. They must act within the four-corners thereof. (vide **Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. and Ors**.(referred supra)).

100) Taking advantage of the principle referred in the above two judgments, the learned Senior Counsel, Sri Ashok Bhan, would submit that, when a statute and rules framed thereunder obligate the Andhra Pradesh Capital Region Development Authority to reserve atleast five percent of total area of the scheme for providing affordable housing for the poor (vide Section 53(1)(d) of Act) or for social housing

for economically weaker sections (vide Section 2(22) of the Act) or to allot the prescribed built up space/dwelling units i.e. constructed houses for accommodating economically weaker section (vide Schedule-II(ii)(f) of the Land Pooling Scheme Rules 2015), no other interpretation can be given *prima facie*, since the Act, and the Land Pooling Scheme Rules, 2015 mandate providing built-up space/dwelling units only, but not house site or house plot. Hence, the proposed allotment of house sites under Land Allotment Policy either to economically weaker section people or to the poor, either as social housing or affordable housing, is contrary to the intention of the Legislature and if the State is permitted to allot such lands as house plots, it would impede or defeat the very intention of the Legislature, since, providing built-up space or dwelling units within the Capital City Area is to allow the poor and economically weaker sections to reside therein during their lifetime. Hence, the proposed alienation of lands by the State Government is *prima facie* contrary to the provisions of the Act; Land Pooling Scheme Rules, 2015 and Land Allotment Regulations, 2017.

101) One of the contentions of the petitioner in W.P.(PIL) No.42 of 2020 is that, divesting of land under Section 57(2) of the Act is only for the purpose of reconstituting and implementing the land pooling scheme, but not for any other purpose. But, the learned Advocate General contended that, vesting of land is not for limited purpose of reconstituting and implementing the land pooling scheme, but to complete process of entire scheme, including preparation of town

planning schemes, infrastructure, maintenance etc. Though the language used in Section 57(2) of the Act appears to be specific that, for reconstituting and implementing the scheme, more stress is made on the word '***for'*** used in Sub-section (2) of Section 57 before the word reconstituting. Such indirect interpretation cannot be given to the word 'for'. Even if the land is vested in the Government, when no power is conferred on the Government for disposal of the land, the question of disposal does not arise in normal course, as discussed in the earlier paragraphs. Therefore, the contention of the learned Senior Counsel Sri Dammalapati Srinivas is more or less purely academic, in view of the discussion in the earlier paragraphs. Therefore, at this stage, this Court need not give more emphasis to the language used to interpret the section, leaving it open to the parties to raise these contentions at the stage of final hearing.

102) G.O.Ms.No.44 dated 12.02.2020 is challenged in I.A.No.2 of 2020 in W.P (PIL) No.42 of 2020. Since the respondents proposed to execute deed of conveyance, alienating the land pooled in the Capital City Area of an extent of Ac.1251-5065 cents in terms of G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019; G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019 and execution of deed of conveyance is only under G.O.Ms.No.44 dated 12.02.2020 is challenged , since this Court already recorded its *prima facie* finding with regard to issue of G.Os in violation of various provisions of the Act, in view of the earlier

observations, no further finding *prima facie* is to be recorded at the interlocutory stage. Hence, it is open to the parties to raise such contentions at the time of final hearing.

103) In view of our foregoing discussion, issuance of G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019; G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.488 MA & UD Revenue (Assignment-I) Department dated 02.12.2019 is *prima facie* in violation of various provisions of the Act. The public at large within the capital area who parted their lands in the land pooling scheme are expecting extensive development of the area on account of construction of capital, but they are losing their hopes in the present situation and in case, the land is allotted even before completing the developmental scheme, it would cause irreparable injury to the farmers who parted their lands in the land pooling scheme. This Court does not find any imminent urgency since the land continues to be available and except the intention to fulfil the promises in the election manifesto, there is no urgency in the matter. Therefore, the balance of convenience is in favour of the petitioners and more particularly, agriculturists in the Capital Region Area who parted their lands. Hence, we find it a fit case to suspend G.O.Ms.No.107 MA & UD (CRDA) Department dated 25.02.2020 and G.O.Ms.No.44 dated 12.02.2020, during pendency of the writ petitions.

104) In the result, I.A.No.1 OF 2020 IN W.P (PIL) No. 49 OF 2020; I.A.No.1 OF 2020 IN W.P. No. 5994 OF 2020; I.A.Nos.1&2 OF 2020 IN

W.P (P.I.L) No. 42 OF 2020 and I.A.No.1 OF 2020 IN W.P. No. 5140 OF 2020 are allowed.

105) I.A.No.2 of 2020 in W.P (PIL) No.42 of 2020 is filed to amend the last sentence in Paragraph 8 of the affidavit in support of the W.PNo.5140 of 2020 by deleting the word "such as the petitioners" inserted therein.

106) For the reasons stated in the accompanying affidavit, I.A.No.2 of 2020 in W.P (PIL) No.42 of 2020 is ordered. Registry is directed to carry out necessary amendment within three weeks.

**CHIEF JUSTICE J.K.MAHESHWARI**

**JUSTICE A.V.SESHA SAI**

**JUSTICE M. SATYANARAYANA MURTHY**

23.03.2020

SP