**SUPREME COURT OF INDIA**

Usha Mehta

Vs.

Government of Andhra Pradesh

C.A.No.3501 of 2003

(G.S.Singhvi and Sudhansu Jyoti Mukhopadhaya JJ.)

16.10.2012

**JUDGMENT**

**G.S.SINGHVI, J:-**

1. This appeal is directed against the judgment of the Division Bench of the Andhra Pradesh High Court whereby the writ appeal filed by the appellant was dismissed and the order passed by the learned Single Judge declining to interfere with the decision taken by the State Government not to regularize the lease deed executed in her favour in respect of land measuring 413 sq. yards was upheld. On an application made by the appellant, the land in question is said to have been leased out to her vide deed dated 10.1.1972 prepared by Venkat Rao, the then Inspector employed in the office of the Estate Officer, Secunderabad in the name of the Revenue Secretary of the State. After getting the lease deed, the appellant applied for permission to raise construction. The Municipal Corporation of Hyderabad refused to grant permission on the ground that the land was earmarked for road and the lease deed executed in favour of the appellant appeared to be fictitious. Thereupon, the appellant approached District Collector and other functionaries of the Government, who recommended regularization of the lease. However, vide memo dated 16.11.1988, the State Government finally rejected the representation of the appellant. That memo reads as under: "GOVERNMENT OF ANDHRA PRADESH

REVENUE (0) DEPARTMENT

Memo No.2405/01/86-7 Dated : 16.11.1988.

Sub:- Land - Hyderabad District - Secunderabad Area Sardar Patel Road - Lease of land measuring 413 Sq. yards in favour of Dr.Mrs.Usha Mehta - Reg.

Ref :- 1. From Dr.(Mrs.) Usha Mehta rep. dt. NIL received on 13.9.1986.

2. Govt. Memo No.2405/01/86-1 dt. 30.9.86.

3. From the Incharge Jt. Collector, Hyderabad letter No. /6/151 Dt. 7.2.87.

4. From the E.O., Secunderabad and Collector,

Hyderabad, Lr.No.DRO/17/87 dt. 13.4.1987.

5. From the C.L.R., Lr.No.BB4/688/87 dt.19.5.87.

2. Government have carefully examined the representation of Dr.(Mrs.) Usha Mehta 1st cited in consultation with the Collector, Hyderabad and Commissioner of Land Revenue. They consider that the original lease deed itself was not issued by an authority competent to issue and the said document is reported to be a forged one, and that the mere fact that the lease amount and property tax were paid would not make a forged lease document a valid one, and hence, any claim based on such a document cannot and should not be accepted, much less acted upon. Therefore her request for restoration of the above said land is rejected accordingly.

The stay granted in the Government memo 2nd cited is hereby vacated.

Sathi Nair,

Secretary to Government."

3.The appellant challenged the decision of the State Government in Writ Petition No. 17494 of 1988 which was disposed of by the learned Single Judge of the High Court vide order dated 12.03.1991 with a direction to the State Government to pass appropriate order after hearing the appellant and respondent Nos. 4 to 6. The relevant portions of that order are reproduced below:

"A reading of the impugned memo which has been extracted above, does not show whether the Government has considered the regularisation of the lease

on the altered circumstances and conditions as suggested by the two authorities. When the competent authorities after enquiry found that regularisation can be made, it is the duty of the concerned authorities, at the time of passing the impugned Memo to take note of the recommendations made by the competent authorities. Without taking note of the recommendations of the authorities and without discussing the pros and cons of the matter, the Government simply issued the impugned Memo. The contention of the petitioner that the Government has passed the order without applying its mind and without taking note of the recommendations of the competent authorities, has some force. On that simple ground only, the impugned Memo is quashed and the authorities are directed to consider the case of the petitioner in the light of the recommendations made by the Collector, Hyderabad District, in the letter dated 13.4.1987 and the letter of the Commissioner of Land Revenue dated 19.5.1987.

Respondents 4 and 5 who claims portion of the land contended that they made be given an opportunity to represent their case before passing the final order. Since respondents 4 and 5 are claim rights over the property, this court is not prepared to investigate into these facts. As the impugned Memo is set aside on the technical ground, this court feels that opportunity be given to the respondents 4 and 5 to represent their case. The Government is directed to pass appropriate orders after giving due opportunity to respondents 4 and 5 as well as the 6th respondent who has been impleaded during the pendency of the writ petition and after considering their respective contention."

4. Writ Appeal No.491 of 1991 filed by R.D. Bhoopal and K.P. Rao (respondent Nos. 5 and 6 in the writ petition) against the order of the learned Single Judge was dismissed by the Division Bench of the High Court and the State Government was directed to pass appropriate order by the end of January, 1992.

5. In compliance of the direction given by the High Court, the State Government re-considered the appellant's plea for regularization of lease, gave opportunity of hearing to the parties and passed order dated 31.1.1992, paragraphs 13 and 14 of which read as under:

"13. As regards the claim of Dr.(Mrs.) Usha Mehta, the Government observe that the grant of lease in favour of her is unauthorised; that the entire transaction is the result of fraud and collusion between her and Sri Venkata

Rao, the then Inspecor of Estate Officer, Secunderabad; that any claim based on forged document should not be accepted much less acted upon; and that Sri R.D. Bhoopal, Sri K.P.Rao and Dr. Usha Mehta have no locus standi to claim the land. Therefore the Government hold that the parties have no claim of any kind of land in question and that it is a Government land. Accordingly their claim petitions are dismissed.

14. The Government further direct that, as the piece of land in question firstly allotted to Mandal Revenue Officer's Office is subsequently allotted to A.P. Women's Cooperative Finance Corporation which has spent money in protecting the land, the land in question be allotted to A.P.Women's Coop. Finance Corporation permanently after excluding the area for road widening, required in public interest as requested by the Collector in his letter 10th read above, is cancellation of the orders issued in the Government Memo 9th read above."

6. Feeling aggrieved by the rejection of her prayer for regularization of the lease, the appellant filed Writ Petition No. 1947 of 1992. The learned Single Judge held that the appellant's claim was founded on a forged document and no direction can be issued under Article 226 of the Constitution for regularisation of the lease deed merely because in other cases lease had been regularised on payment of the current market value.

7. The Division Bench of the High Court examined the record produced by the parties, referred to Article 299 of the Constitution and some of the judgments of this Court and held: "It is now well settled that the provisions of Article 299 of the Constitution which are mandatory in character require that a contract made in the exercise of the executive power of the Union or of a State mush satisfy three conditions viz., i) it must be expressed to be made by the President or by the Governor of the State, as the case may be; ii) it must be executed on behalf of the President or the Governor as the case may be; and iii) its execution must be by such person and in such manner as the President or Governor may direct or authorize. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable."

8. Shri D. Ramakrishna Reddy, learned counsel for the appellant vehemently argued that even if lease deed dated 10.1.1972 was forged, the High Court should have issued a direction to the respondents to regularize the same because in 100 similar cases, the lease deeds executed by Venkat Rao was regularized by the State

Government on payment of market value. Learned counsel further argued that the impugned judgment is liable to be set aside because neither the learned Single Judge nor the Division Bench adverted to and decided the plea of discrimination raised by the appellant. Smt. C.K. Sucharita, learned counsel for the State argued that the High Court did not commit any error by refusing to entertain the appellant's plea for regularization of the lease because the initial document prepared in her favour was forged. She emphasized that even though Venkat Rao was not authorised by the State Government to execute lease in favour of any person, he created a fabricated documents purporting to transfer public land and after taking cognizance of this fact, the State Government had declined to regularize the deed allegedly executed in favour of the appellant on 10.1.1972.

9. Shri P.V. Shetty, learned senior counsel appearing for respondent No.2 submitted that his client's land has nothing to do with the plot in question and that the appellant has no right to seek regularization of the lease deed executed in her favour by Venkat Rao. He also discloses that Venkat Rao has been convicted by the competent Court for the offence of forgery.

10. We have considered the arguments of the learned counsel and carefully perused the record including additional affidavit dated 22.3.2012 filed by K.V. Suresh Babu in compliance of orders dated 3.8.2011 and 12.1.2012 passed by this Court. Paragraphs 2, 3 and 4 of that affidavit are extracted hereunder:

> "2(a). That upon hearing the above appeal, this Hon'ble. Court (Coram Hon'ble Justice V.S. Sirpurkar and Hon'ble Justice T.S.Thakur) was pleased to pass the following order on 3.8.2011:-

11. During the course of arguments, the question arose as to whether the allotments, which were regularized by the Government were in pursuance of any definite policy of the State Government. Further the question arose as to whether what was the consideration of the State Government in regularizing nine plots as mentioned in Memo No.6/151 dated 20.3.2003. Similarly, the question arose about the other regularizations made by the State Government.

12. Mr. Venkatanarayana, learned senior counsel appearing for the State seeks time to clarify all these, issues by filing an additional affidavit, List these matters after four weeks.

(b) That thereafter upon hearing the matter on 12.1.2012, this Hon'ble Court (Coram: Hon'ble Justice Deepak Varma and Hon'ble Justice Chandramauli Kumar Prasad) was pleased to pass the following order-

"Pursuant to the order passed by this Court on 3.8.2011, additional Affidavit dated 29/11/2011 has been filed by State/Respondent on 30.11.2011. Along with additional Affidavit, documents have also been filed. The question involved in this Appeal is whether in the disputed piece of land admeasuring 413 sq.yds. in TSL.R-2, Block-B, Ward -101, Secunderabad, road has been widened and remaining part of land is being used for paid parking or not or it is yet to be widened.

13. Learned counsel for Appellant has seriously refuted the said averment and according to him, it is only a proposal for road widening, pending since 1975. But till date, no road has been widened and no area has been earmarked for paid parking.

14. In view of this disputed position, we direct the Respondent/State to file documents to show and substantiate when the road was widened through which Contractor and since when the paid parking is being used.

15. Mr.Anoop Choudhary, learned senior counsel for Respondent/State, prayed for four weeks' time to clarify the position by filing further Affidavit and documents in this regard. While doing so, the previous order passed by this Court may also be complied with.

16. List these matters after four weeks.

3. That it is submitted that out of the total extent of 413 square yards of land in issue in the present case, an extent of 299 square yards is covered by road being part of 150 feet wide heavy traffic road- S.P. Road in Hyderabad city. As is evident from the letter dated 2.2,2012 of the Executive Engineer, PD-II, GHMC the said road was laid long back. Hence no records are available in the office. A true photocopy of the said letter dated 2.2.2012 of the executive Engineer, PD-II, GHMC, Greater Hyderabad Municipal Corporation is annexed hereto as Annexure- VII. Further, as is evident from the tender notifications/circulars issued' for the purpose, the remaining extent of 114 square yards of land is used by the Greater Hyderabad Municipal Corporation since the year,.1999 as paid parking site for vehicles.

The photographs of the suit land showing the portion of the land in issue (299 square yards) which is covered by road and the parking lot are annexed hereto as Annexure-VIII (Colly).

17. The map of the area clearly showing that the land in issue is covered by road and parking lot is annexed hereto as Annexure IX.

18. A true photocopy of the tender notification dated 13.3.2000 by the Municipal Corporation of Hyderabad calling for applications for leasing out the right to collect parking fee from two wheelers and 4-wheelers on identified roads at road margin including the land in issue (mentioned at S.No.97 of the Annexure there as Scooter Parking on road side from Ashok Bhoopal Chambers to May Fair Complex on SP Road) is annexed hereto as Annexure X.

A true photocopy of circular dated 13/14.5.2010 of the Greater Hyderabad Municipal Corporation directing all the Zonal Commissioners to complete the sealed tender-cum-open auction by 1.6.2010 for parking lots mentioned in the Annexure thereto including the land in issue (at S.No.22-Ashok Bhupal Chamber to Reliance Web World, S.P. Road, Secunderabad- is annexed hereto as Annexure XI.

4. That it is submitted that the status of the 102 illegal, bogus and forged lease-deeds is as follows:-

I. 51) cases were founds to be not fit for filing land grabbing cases. The details of action in these cases are as follows:

i) Assigned (Sold) by Government on 9 payment of market value as the lessees had put up construction and were in possession thereof (Annexure XII)

ii) Bogus renewal lease deeds cancelled 29 and fresh lease deeds issued in lieu thereof to the same persons since they were in possession thereof and had constructed residential houses, (original leases prior to Bogus renewal leases were genuine in these cases) -Annexure XIII.

iii) Lease deeds after expiry of (30) years 13 period bogus renewal deeds issued but families of original lessees are residing in old buildings existing

thereon and fresh renewal deeds issued as the original leases were genuine Annexure XIV.

TOTAL 51

(II) In (45) cases Land Grabbing cases were filed by Mandal Revenue Officer, Secunderabad.

i) Certain cases disposed off by Civil 4 Courts with a direction to the lessees (Respondents) to pay the market value as fixed by the Government -lessees were in possession (Annexure XV)

ii) Cases pending in the Civil Courts 30 (Annexure XVI)

iii) Cases with drawn and conveyance 10 deeds were issued since the lease deeds were found to be genuine (Annexure XVII)

iv) Free Hold orders issued by the Special 1 Chief Secretary. Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad as the original lease was genuine and Conveyance Deed not yet executed due to pendency of Civil Dispute in Court (Annexure –XVIII) TOTAL 45

III) Leases not covered by encroachments and kept 3 vacant-required for road widening etc and not regularized. (Annexure XIX)

IV) Under the possession of religious institutions.

i) Church of South India (Civil Suit is pending)

(ii) Mosque New Bhoiguda 1 (Annexure XX)

V) The land in issue in the present case admeasuring 1 413 square yards which already covered by a 150' wide road and paid parking lot.

Total (I, II, III, IV and V) 102

19. In our opinion, the appeal is wholly meritless and liable to be dismissed for more than one reasons, which are enumerated below:

1. The finding recorded by the State Government that the lease deed allegedly executed on behalf of the Estate Officer was a forged document and no right much less a vested right was created in favour of the appellant on the basis of such document is based on the correct analysis of the documents produced by the parties and the High Court did not commit any error by refusing to interfere with that finding. Learned counsel for the appellant could not produce any document to show that Venkat Rao was authorised by the State Government to execute lease on its behalf in favour of the appellant. Therefore, it is not possible to find any fault with G.O.Ms.No.130 dated 31.1.1992.

2. The plea of discrimination raised by the appellant was wholly misconceived and the High Court rightly declined to entertain the same. Article 14 of the Constitution declares that:

"14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The concept of equality enshrined in that article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities.

The question whether Article 14 can be invoked for compelling public authorities to pass an illegal order or commit an illegality on the ground that in other cases, similar order has been passed or illegality has been committed is no longer res integra and has to be answered against the appellant.In Chandigarh Administration v. Jagjit Singh (1995) 1 SCC 745, this Court considered the question whether the High Court was right in invoking Article 14 of the Constitution for compelling the appellant to pass an order contrary to law merely because in another case such an order was passed and answered the same in negative by making the following observations:

" … We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent Authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent Authority to repeat the illegality or to pass another unwarranted order. (emphasis in original) The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent Authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. (emphasis supplied) By refusing to direct the respondent Authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not

> before the case (sic court) nor is his case. In our considered opinion, such a course—barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

20. Similar is the ratio of the judgments of this Court in Narain Das v. Improvement Trust, Amritsar(1973) 2 SCC 265; Gursharan Singh v. NDMC (1996) 2 SCC 459, Jaipur Development Authority v. Daulat Mal Jain (1997) 1 SCC 35, Yadu Nandan Garg v. State of Rajasthan (1996) 1 SCC 334, State of Haryana v. Ram Kumar Mann (1997) 3 SCC 321 , Faridabad CT Scan Centre v. D.G. Health Services (1997) 7 SCC 752, Style (Dress land) v. UT, Chandigarh (1999) 7 SCC 89, State of Bihar v. Kameshwar Prasad Singh (2000) 9 SCC 94, Union of India v. International Trading Co. (2003) 5 SCC 437, Ekta Shakti Foundation v. Govt. of NCT of Delhi (2006) 10 SCC 337, Sanjay Kumar Manjul v. UPSC (2006) 8 SCC 42, K.K. Bhalla v. State of M.P. (2006) 3 SCC 581, National Institute of Technology v. Chandra Shekhar Chaudhary (2007) 1 SCC 93, Vice-Chancellor, M.D. University v. Jahan Singh (2007) 5 SCC 77, State of Kerala v. K. Prasad (2007) 7 SCC 140, Punjab SEB v. Gurmail Singh (2008) 7 SCC 245 and Panchi Devi v. State of Rajasthan (2009) 2 SCC 589 andShanti Sports Club v. Union of India(2009) 15 SCC 705.

21. It is also apposite to note that even though the appellant had raised the plea of discrimination, she did not produce any evidence to prove that other cases were identical to her case. In the absence of such evidence, the High Court could not have relied upon the bald statement contained in the writ petition filed by the appellant and quashed the well reasoned decision taken by the State Government not to regularise the lease in her favour.

> 3. The lease deed executed in favour of the appellant was ex- facie contrary to the doctrine of equality enshrined in Article 14 of the Constitution. It is neither the pleaded case of the appellant nor any material has been produced by her to show that lease deed dated 10.1.1972 was executed after issuing an

advertisement so as to enable other eligible persons to compete for allotment of public land. In Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and others (2011) 5 SCC 29, this Court considered the question whether the State Government had the power to allot a piece of land in the name of a political-cum-social leader for the purpose of establishing a training institute albeit without issuing any advertisement. After considering the scope of Article 14 of the Constitution in the matter of grant of licence, allotment of land, distribution of largesse etc. and noticing the judgments in S.G. Jaisinghani v. Union of India AIR 1967 SC 1427, Ramana Dayaram Shetty v. International Airport Authority of India and others (1979) 3 SCC 489, Kasturi Lal Lakshmi Reddy v. State of JK (1980) 4 SCC 1, Common Cause (petrol pumps matter) v. Union of India, (1996) 6 SCC 530, Kumari Shrilekha Vidyarthi and others V. State of U.P. and others (1991) 1 SCC 212, LIC v. Consumer Education and Research Centre (1995) 5 SCC 482 andNew India Public School and others v. HUDA and others (1996) 5 SCC 510, this Court observed:

"What needs to be emphasised 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 recognised 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 favouritism or nepotism shall not influence the exercise of discretion. If any, conferred upon the particular functionary or officer of the State.

We may add that 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 dehors 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 favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution."

In the result, the appeal is dismissed and the following directions are given:

(i) Within two months from today, the State Government shall take possession of the land and, if necessary, by demolishing the illegal structures which may have been raised by the appellant or any other person.

(ii) Within next four weeks, a report showing compliance of the aforesaid direction be submitted in the Registry of the Andhra Pradesh High Court.

(iii) The Registrar (Judicial) of the High Court shall take orders from the Chief Justice and list the case before an appropriate Bench. If it is found that the State functionaries have failed to comply with the aforesaid direction, then the High Court shall initiate proceedings against the defaulting officers under the Contempt of Courts Act, 1971.

The Registry is directed to send a copy of this judgment to the Registrar (Judicial), Andhra Pradesh High Court by Fax.

**ORDER**

In this petition filed under Article 129 of the Constitution read with Order XLVII of the Supreme Court Rules, 1966 and Rule-3 (C) of the Rules to regulate proceedings for contempt of the Supreme Court, 1975, the petitioner has prayed for punishing the respondents for violating order dated 1.10.2001 passed in SLP (C)No.16383/2001. Today, we have dismissed the appeal (Civil Appeal NO.3501/2003 arising out of SLP (C) No.16383/2001). Therefore, the Contempt Petition is also dismissed.