HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

****

WRIT PETITION No.25275 OF 2020

Between:

Podili Siva Murali and 128 others.

... Petitioners

And

State of Andhra Pradesh,
Through its Principal Secretary,
Revenue (Assignment-I) Department,
Secretariat, Amaravathi and 5 others.

... Respondents.

JUDGMENT PRONOUNCED ON 08.10.2021

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? - No-
2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

* **THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

+ WRIT PETITION No.25275 of 2020

% 08.10.2021

Podili Siva Murali and 128 others

....Petitioners

v.

$ State of Andhra Pradesh,
Through its Principal Secretary,
Revenue (Assignment-I) Department,
Secretariat, Amaravathi and 5 others.

.... Respondents

! Counsel for the Petitioners : Sri V.S.R.Anjaneyulu

Counsel for Respondents: Sri Ponnavolu Sudhakar Reddy,
Additional Advocate General.

<Gist :

>Head Note:

? Cases referred:

1. (1980) 3 SCC 625
2. (1985) 3 SCC 545
3. (1981) 1 SCC 608
4. 1973 (4) SCC 225
5. (2004) 4 SCC 714
6. (2006) 10 SCC 337
7. (2015) 9 SCC 657
8. AIR 1993 SC 1202
9. (2009) 15 SCC 221
10. AIR 1991 SC 1902
11. AIR 2000 SC 3060
12. AIR 1967 SC 295
13. (2007) 4 SCC 669
14. AIR 2007 SC 1161

15. AIR 2004 SC 1402
16. (1981) 1 SCC 568
17. (1986) 4 SCC 566
18. (1981) 4 SCC 675
19. (1991) 3 SCC 91
20. (1994) 2 SCC 691
21. (1997) 7 SCC 592
22. (1998) 4 SCC 117
23. (2000) 10 SCC 664
24. (2002) 2 SCC 333
25. (1980) 3 SCC 97
26. (2003) 4 SCC 289
27. (2014) 5 SCC 438
28. 1997 (6) ALT 548
29. AIR 1995 SC 1648
30. [1987]1SCR1
31. [1975]3SCR254
32. AIR 1993 SC 477
33. ILR 1953 Bom 842
34. (2002) 5 SCC 195
35. 1999 Supreme Court Cases (L&S) 625
36. AIR 1972 All 305
37. 1990 (3) SCC 130
38. AIR 2001 SC 467
39. AIR 1951 SC 226
40. AIR 2003 SC 3331
41. (2011) 5 SCC 29
42. (2015) 1 SCC 192
43. [1959] SCR 279
44. (1976) 2 SCC 310
45. ILR 1979 Delhi 422
46. (2020) SCC Online SC 383
47. 1963 Supp 1 SCR 439
48. (1964) 6 SCR 368
49. (2001) 7 SCC 126
50. (1980) 1 SCC 634
51. (1981) 1 SCC 722
52. (1978) 1 SCC 248
53. (1979) 3 SCC 489
54. AIR 1946 PC 66
55. AIR 1992 SC 932
56. AIR 1979 SC 1165
57. AIR 1976 SC 588

58. AIR 1958 Bom 498
59. AIR 1959 SC 395
60. AIR 1961 SC 954
61. AIR 1960 SC 1191
62. AIR 1967 SC 647
63. 260 (2019) DLT 581
64. AIR 2009 Cal. 87
65. 2008 (8) MLJ 1037
66. AIR 1997 Cal. 374
67. AIR 2011 Cal. 64
68. (1995) 3 SCC 42
69. AIR 1996 SC 114
70. AIR 1996 SC 90
71. (1996) 2 SCC 549
72. 1995 (1) SCALE 653
73. (2013) 1 SCC 353
74. (2007) 6 SCC 59
75. 2005 (6) ALD 488
76. AIR2017SC4161
77. (1990) 1 SCC 520

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.25275 of 2020

ORDER:

The prestigious laudable flagship programme initiated by the State under the name and style of "***Navaratnalu - Pedalandariki Illu***" is challenged initially by three petitioners by filing this petition under Article 226 of the Constitution of India, later petitioner Nos.4 to 129 came on record vide orders of this Court dated 03.08.2021 passed in I.A.No.01 of 2021, to issue a writ of Mandamus declaring G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 are illegal, arbitrary and violative of Articles 14 and 15 of the Constitution of India, directing the respondents 1 to 4 to assign/allot the plots under Constitutional transparent policy; consequently direct them not to proceed further in pursuance of G.O.Ms.No.367 Revenue (Assignment-I) Department, dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019.

The petitioner Nos.1 to 3 and other petitioners are residents of Tenali claiming that they are houseless poor, eking out their livelihood as daily labourer, living below poverty line. Petitioners have no property to take shelter or any other source of livelihood. Petitioners submitted a representation dated 25.10.2016 requesting respondent Nos.3 and 4 to allot house site, but no site was allotted to them. Consequently, they were constrained to file W.P.No.45475 and 46463 of 2016 before the High Court of Andhra Pradesh at Hyderabad, to issue a writ of Mandamus directing respondents to assign house site plots. The High Court of Andhra Pradesh at Hyderabad vide order dated 26.12.2016 disposed of the writ petition

No.45475 of 2016 directing to consider their request for assignment of plots in Tenali Municipality area in accordance with law, if they are otherwise eligible and entitled for the said benefit. The High Court of Andhra Pradesh at Hyderabad, vide order dated 02.01.2017 disposed of W.P.No.46463 of 2016 with the same direction.

Respondent Nos.3 and 4 received copy of the order, but failed to comply with the directions. Thereupon, the petitioners filed C.C.Nos.1353 and 1354 of 2017 before the High Court of Andhra Pradesh at Hyderabad. Respondent No.4 filed counter alleging that the department made an enquiry to find out suitable land for acquisition and to allot the same, since suitable land was not found, it takes time to distribute the land. Both the CCs are pending before this Court now.

Petitioners again submitted a representation dated 03.06.2020 requesting respondent Nos.3 to 5 to assign house plots. Vide orders dated 26.12.2016 and 02.01.2017, respondent Nos.3 to 5 represented that they would consider their cases in "***Navaratnalu programme (Pedalandariki illu)***". Having failed to receive any communication, the petitioners approached respondent No.4 requesting to consider their case in the ensuing programme, who in turn, though directed them to approach the authorities several times, failed to take any action. When one of the petitioners questioned respondent No.4 as to why the matter is being procrastinated, the authorities asked him to get out of the office using highly objectionable language and insulted him. Respondent No.4 has asserted that since the programme is only for the benefit of the women, they would only be considered and even for them

one has to obtain a consent letter from the local Volunteer, which is seldom possible for the petitioners.

It is specifically asserted that the volunteers are openly asking whether the petitioners belong to the Ruling party, demanding money. Respondent Nos.3 to 5 are fully supporting the version of the volunteers for the reasons known to them. Since the Tahsildar supported the version of volunteer, he was impleaded personally as respondent No.6. Respondent Nos.3 to 5 are allotting the plots in favour of the persons, suggested by the volunteers, without following established transparent procedure, under the colour of flagship programme. As the allotment would be made only to the persons suggested by the volunteers and that respondent Nos.3 to 5 did not grant pattas to the petitioners, in violation of the orders of the High Court of Andhra Pradesh, petitioners approached the High Court of Andhra Pradesh under the circumstances stated above.

Respondent No.1 vide G.O.Ms.No.367 Revenue (Assignment-I) Department, dated 19.08.2019, approved the Policy guidelines to implement the flagship programme ***"Navaratnalu Pedalandariki Illu***" for distribution of 25 lakh House Site Pattas/Housing units. Clause (2) deals with Size/Extent of the House site Patta. One House Site Patta shall be issued for an extent of 1.5 Cents to an eligible house hold, in Rural area, vide Clause (2A), whereas, Housing units shall be constructed following the G+3 pattern about 100 units in about Ac.1.00 cts, in the name of the "Woman Beneficiaries" of the House in Urban Area vide clause "(2B)". House site pattas shall be issued with the conditions of B.S.O-21 and in terms of the Andhra Pradesh

Assigned Lands (Prohibition of Transfers) Act, 1977 (for short "the A.P. Act 9 of 1977") (As amended from time to time), vide Clause (3).

Respondent No.1, vide G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 issued additional guidelines in addition to the earlier Policy Guidelines (G.O.Ms.No.367).

Clause 2-ii, reads as follows:-

(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

Clause 2 (x), (xi), (xii), and (xiii) are also relevant, they are as follows:

(x) The present house site allotment is treated as concessional allotment and not a 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.

It is further alleged that the Tahsildar is appointed as Joint Sub- Registrar under Section 6 of the Registration Act, 1908 for executing and registering the conveyance deeds, vide G.O.Ms.No.42 Revenue (Registration-1) Department, dated 12.02.2020. Respondent No.1 vide G.O.Ms.No.44 Revenue (Lands-I) Department, dated 12.02.2020 issued orders for registration of House site pattas as conveyance deeds in favour of the Beneficiaries and the relevant Clauses are follows»

8. After careful examination, Government hereby order to execute Conveyance deed for house site pattas, to be issued under the programme norms "***Navaratnalu - Pedalandariki Illu***" .
9. The Conveyance deed shall contain following features:
   (i) Party details (Executants/Claimant)
   (ii) Property details
   (Schedule) (iii) Witnesses
   (iv) Photographs & Thumb impressions and Signatures of parties in from 32 (A).

Respondent No.1 vide G.O.Ms. No. 99 Revenue (Lands-I) Department, dated 31.03.2020 modified policy guidelines and relevant portion of Para (3) reads as follows:-

> "..... The main objective of the programme is to provide Shelter (house) to the houseless poor in the State.....”
>
> According to Clause (6-B):-
>
> (i) The House site shall be allotted at concessional rate of Re. 1/- (one rupee) as the house site is being allotted to people, Below Poverty line (BPL), to enable them to construct own house.
> (ii) Hence, Rs.211- (Rell-towards cost of House site, Rs.lO/- towards cost of stamp paper and Rs.l 0/- towards lamination charges) shall be

collected from the beneficiary

Clause 6-D. Allotment House Site Patta

(i) House site patta will be allotted in the form of conveyance deed to.....

(ii) This is to enable and ensure that the beneficiaries get the loans from the banks for construction of house

(iii) Sale of Vacant House site is prohibited. However, the beneficiary after construction of house and occupying it for a minimum period of 5 years can transfer, in case of any necessity, subject to conditions imposed financial institutions.

A cumulative reading of various clauses of the respective Government Orders (referred above), it could be culled out that the State originally has taken a policy decision that the House site allotment shall be made with the conditions, vide B.S.O-21 and in terms of the A.P.Act 9 of 1977 (as amended from time to time), vide G.O.Ms.No.367 and later issued G.O.Ms.No.488 giving additional guidelines, that the "House site allotment", is treated as "concessional allotment" and not as "free assignment". The State vide G.O.Ms.No.99, brought partial modification and issued revised criteria, that the House sites will be allotted in the form of "conveyance deed", at a concessional rate of Re.1/- . Hence, it is clear that the State has brought various Government Orders changing the basic policy from time to time without any definite sound and transparent Policy, for execution of "***Navaratnalu - Pedalandariki Illu***" programme.

Part-II of the Andhra Pradesh Revenue Board Standing Orders (for short "B.S.O") deals with the disposal of land. B.S.O-21 deals with the Assignment of House site in Villages and Towns to the landless poor. Among the eligible landless poor applicants, preference shall be given to the people in the Village/Town, where

the land is situated and who owns no land at all. Among these category of persons, preference shall be given to the members of Scheduled Tribe, Schedule Caste, converted Christians and other Backward Classes in the assignment of waste lands at the disposal of the Government.

Part-IV of the Constitution of India deals with "Directive Principles of State Policy". Relevant portion of Article 39 of the Constitution of India reads as follows:-

Article 39: Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing-

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood.

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) That the operation of the economic system does not result the concentration of wealth and means of production to the common detriment.

As per Article 39 of the Constitution of India, the State shall direct its policy towards securing all the citizens equally, since "all have the right to adequate means of livelihood". It is the duty of the State to apply the Directive Principles in making the laws, since Article 39 specifies the directive principles of State policy required to be followed by the State. The fundamental rights and the Directive principles are two wheels of the Chariot in establishing the egalitarian social order (vide: ***Minerva Milts Ltd. v. Union of***

India[1]). The State shall direct its policies towards securing that the men and women equally have the right to adequate means of livelihood. Any person, if deprived of his "Right to livelihood", only by just and fair procedure, established by law, can challenge the deprivation of offending right to life, vide Art. 21 of the Constitution of India (***Olga Tellis v. Bombay Municipal Corporation***[2]"). Article 39(b) adumbrates a mandate to secure the ownership and control of the material source of the community are so distributed, to subserve the common good.

It is further asserted that the object sought to be achieved is to eradicate rural indebtedness and thereby to secure the common good of the people living in the abject. The policy to assign the Government land is to prevent perpetuation of injustice and feudal order and to prevent concentration of material resource of the community in the hands of citizens, few. Assignment of the land to the weaker sections of the Society is in furtherance of a Constitutional obligation imposed upon the State to secure the citizen, an adequate means of livelihood, adequate housing without any discrimination, as per the principle laid down in "***Francis Coralie Mullin v Administrator, Union Territory of Delhi***[3]", wherein the Court held as follows:

> "6.....The Fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it whit significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person."

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[1] (1980) 3 SCC 625
[2] (1985) 3 SCC 545
[3] (1981) 1 SCC 608

Allotment of House sites in favour of vulnerable sections of the Society is a necessary corollary and acquired the Constitutional status.

Clause (6) of G.O.Ms.No.367 deals with the "method of selection". The applications shall be invited at village/ward level considering Village/Town, as a unit respectively (Clause 6-A) and all the applications shall be enquired by the Village/Ward "Volunteers" adherence to the eligibility conditions. The process of selection and "identification of the Beneficiaries" are too vague and unscientific. Any amount of mischief can be played for identification especially, since the power of conducting enquiry is vested with the village/ward volunteers whose competency is highly doubtful, keeping aside the employees, acquainted in conducting socio-economic survey.

It is further submitted that the mode of "invitation" and "publication" are without any scientific approach besides being vague. Admittedly, the State has undertaken the process of distribution of 25 lakhs House site pattas initially and now making propaganda, programming for the distribution of 30 lakhs of House site pattas covered by 62,000 acres incurring an expenditure of about Rs.30,000/-Crore and out of the same, about 25,000 acres of land has been purchased paying market value incurring an expenditure of about Rs.10,000/- crore and an amount of Rs.5,000/-Crore from NRGA funds. About 25000 acres is a Government land, value of it is about 10,000/-Crore. Rest of the land is acquired from land pooling scheme, CRDA and TIDCO incurring an expenditure of about Rs.10,000/-Crore. This is the estimated cost of the project, without any definite policy. Vide

G.O.Ms. No.313, the allotment of plots to the beneficiaries is by "Drawing of lottery," an equally too vague. State has no definite policy and changing the same from time to time.

The whole process being undertaken for such large scale of project is too vague and is unscientific. Allotment of land must be founded on sound, transparent, discernable and well defined policy. There is any amount of mischief in the process of allotment. Persons belonging to the Ruling party are being given prime plots, though not eligible. When some beneficiaries questioned the concerned, about the process being implemented, who in turn, gave a reply, that whatever given, is a charity. This sort of attitude is highhanded and a colourable exercise of power. Process of allotment/assignment to the weaker sections of the Society is not a charity, but part of obligation of State as per the Directive Principles of the State policy and a Constitutional goal.

Article 15 of the Constitution of India deals with the "Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth". Relevant Article reads as follows:

Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth :-

1)The State shall not discriminate the citizen on grounds only religion, race, caste, sex, place of birth or anyone of them.

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3) Nothing in this Article shall prevent the State from making any special provision for women and children.

As per clause 2 (A) and 2 (B) of G.O.Ms.No.367, a House Site Patta shall be issued in the name of "woman beneficiary" of the House hold. The State has programmed to distribute 30 lakhs of House site Pattas in the name of women. Admittedly, the

State has undertaken the scheme of concessional allotment; in view of the Constitutional duty enshrined in Part IV of the Constitution of India. Directive principles of the State Policy are fundamental in the governance of the Country and it is the duty of the State to apply these principles without any discriminative attitude in the process of allotment/conferring the largesse.

The gender equality is a fundamental right and the discrimination by the State is absolutely violative of the Constitutional mandate. A special provision must be within reasonable limits and same principle applies to Article 15 (3) of the Constitution of India also. 100% allotment in favour of women beneficiary is unconstitutional. Equal protection mandates, all the persons should be treated, alike. Policy must answer the test of arbitrariness embedded in Article 14 and prohibits discrimination in any form, since it aims at equality. Any violation would be violative of basic structure and essential feature of the Constitution of India.

Every action of the State to confer benefits/largesse must be founded and shall be implemented/executed by adopting a definite, transparent well defined non-discriminatory and non-arbitrary policy, irrespective of the class or category of the persons proposed to be benefited by the Policy, with an established procedure. Any allotment of land on political considerations with a view to nurture the vote bank for future, is constitutionally impermissible. Any allotment of land/grant by a Democratic Government/the State cannot adopt arbitrary and discriminative Policy, which does not stand to legal scrutiny, to the test of reasonableness, violating the respective Constitutional provisions and goals. The State has evolved the scheme of allotment of House site policy to women of

the house hold, depriving the other categories as vote bank policy with an ulterior motive. In allotment of any public property/largesse, the State cannot act at its will and pleasure and has to follow the equality clause, vide Article 14 of Constitution of India in general and Article 15(1) of the Constitution of India in particular.

The Court has power to examine the validity of the policy/Statue, if it is in violation of any provision of the Constitution including the fundamental rights of a citizen. As long as the fundamental rights exists and are part of the Constitution, the power of Judicial review has to be exercised, since the same cannot be violated. To declare an invalid legislation, which transgresses the Constitutional limits, it is a concomitant obligation of the Court.

State is under the obligation to respect the Constitutional mandate. The Democratic Government shall not be permitted to act, at its whim and fancy. The whole approach of the State is in violation of Rule of law, a basic feature of the Constitution and its fabric. The State incurring thousands of crores of public money cannot and shall not be permitted to act, at its whims and fancies. The whole process is unconstitutional and violative of basic structure of Constitution of India. The Rule of law is recognized as a basic feature of our Constitution (vide: ***Kesavananda Bharathi v. State of Kerala***[4]). Rule of law is a social justice based on public order and demands protection of individual human rights. Since the respondents are proceeding to assign/allot the plots in favour of the women beneficiaries exclusively, depriving all the other

[4] 1973 (4) SCC 225

classes, having no other alternative the petitioners approached this Court, to protect fundamental rights of citizen of the State and human rights of human beings at large, requested to issue a direction as claimed in the writ petition.

Respondent Nos.1 and 4 filed separate counters.

Respondent No.1 admitted about passing of Government Orders and the scheme formulated by the State for allotment of house site plots to landless poor vide G.O.Ms.No.367 Revenue (Assignment – I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department dated 02.12.2019. The said Government orders are issued in pursuance of a policy of the Government to provide house plots to landless poor. The policy of the Government could be set aside only on limited grounds where fundamental rights are violated. In the present case, it is not the case of the writ petitioners that their fundamental rights are violated, the petitioners are canvassing that the plots are being allotted in the name of women and it amounts to discrimination on the ground of sex, the said contention is misconceived as Article 15(1) and (3) have to be read harmoniously, but not in isolation. The entire Article 15 has to be read as a whole and cannot be read in punctuated manner or in isolated manner. In Article 15, the framers of the Constitution in their wisdom had carved out an exception that may be termed as protective discrimination i.e., the State shall make special provisions for advancement of women or children and empower socially and economically backward classes. The state in its august object for the advancement of women had formulated policy under G.O.Ms.No.367 Revenue (Assignment –I) Department dated 19.08.2019 to allot land in the name of women in a family. A family is taken as a unit for

allotment of land, family consists of both spouses and children. Mere allotting land on the name of women does not amount to discrimination as the said benefit is derived to entire family as all family members live in the house that would be constructed in the said land. The Government policy for framing guidelines is, exclusively, domain of the Government of the day, the views of a particular individual cannot be substituted in place of policy of the Government. If that analogy is adopted there would be no end for placates of litigation. The petitioners failed to demonstrate the policy so framed is offending fundamental rights of the petitioners. The only ground that was canvassed is it cannot be granted in the name of women and they rely upon Article 15 of the Constitution, Even a bare reading of Article 15 does indicate that there is principle called as protective discrimination.

It is further contended that the Supreme Court in "***The State of UP v. Johrimal***[5]", laid down the principle that the scope of judicial review is limited and further states that the power of judicial review is not interject to assume a supervisory role or done the ropes of omnipresent, the power is not intended either to review governance under rule of law nor the courts step into areas exclusively reserved for Suprema Lex to other organs of the State. The decisions and actions do not have adjudicative disposition and may not strictly fall for consideration before the judicial review court. Apart from that without anything more is not enough to attract, similarly the Hon'ble Apex Court in "***Ekthashakti foundation v. Government of NCT of Delhi***[6]" laid down the ratio that Constitution

[5] (2004) 4 SCC 714
[6] (2006) 10 SCC 337

does not permit the court to direct or advise the executive, in the matters of policy or to teermana any matter each under the Constitution within the sphere of legislature or executive, provided, these authorities do not transgress their Constitutional limits or Statutory limits. The Hon'ble Supreme Court in "***Parisons Agrotech (P) Ltd. v. Union of India***[7]" had laid down similar principle that while exercising power of judicial review of administrative action, the court cannot act as appellate authority and Constitution does not permit the Court to interfere in the matters of policy. The Apex Court in "***Premier Tyres Limited v. Kerala State Road transport***[8]" laid down the ratio that courts cannot possibly assess or evaluate what to be the impact of particular immunity or exemption whether which would serve the purpose in view or not. Thus, the power of this Court to test the legality of the Government Orders referred above is limited.

Respondent No.1 denied the allegation that G.O.Ms.No.367 Revenue (Assignment –I) Department, dated 19.08.2019, G.O.Ms.No.99, Revenue (Lands –I) Department, dated 31.03.2020 were issued without any transparent policy for execution of "Pedalandariki illu" program is misconceived, as a bare perusal of the aforesaid Government Orders clearly reflects that the policy is based on the objective considerations and it is a transparent policy to reach people belonging to below poverty line who are houseless. Therefore, the petitioners are suffering from contextual shrinkage in understanding the horizons of the Government Orders.

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[7] (2015) 9 SCC 657
[8] AIR 1993 SC 1202

The judgment in "***Francis Coralie Mullin v. Administrator, UT of Delhi***" (referred above) referred by the petitioners has no application to the present facts of the case.

Respondent No.1 denied the allegation of identification of vague or unscientific method for selection of beneficiaries and contended that the beneficiaries who are identified should be white ration card holders on the basis of their annual income. Therefore, these are guiding factors to ascertain the beneficiaries, as such there are objective yardsticks in identifying the beneficiary. It appears that the petitioners are suffering from Jaundice in understanding the policy of the Government in the breath. The petitioners are also beneficiaries of this policy as the petitioners have secured housing plots in favor of their wives.

Respondent No.1 denied the allegation made against the volunteers in the process of identification of beneficiaries, so also allotment of prime plots to the ruling party supporters and contended that it is not supported by any material. Therefore, in the absence of any document, the Court may draw an adverse inference under Section 114 (G) Indian Evidence Act.

It is further contended that the petitioners failed to understand the purport, horizons, amplitude of Article 15 of Constitution of India, even going by para 19 of the affidavit filed by the petitioners the verbatim of Article 15 is extracted where Clause-1 states that State shall not discriminate any person only on the grounds of religion, sex, caste or place of birth etc. The same Article 15(3) of Constitution of India stipulates that nothing in this article shall prevent the state from making any special provision for women and children. Therefore, the action of the Government in the impugned

G.O. traces its source of power from Article 15(3) and also from directive principles of state policy enshrined under Part IV of the Constitution of India. The impugned government orders are sustainable as they are in consonance with Article 15(3) of the Constitution of India. Therefore, the entire pleadings of the Writ Petitioners are misconceived. Because of that the wives of petitioners were allotted plots, no cause of action survives.

It is further contended that G.O.Ms.No.367 is framed with an object to provide house site and family as unit, and family consists of both spouses and children. Therefore, the petitioners are also beneficiaries, thereby, the contention of discrimination is illusory and also suffers from contextual shrinkage.

Respondent No.1 also denied the allegation that allotment of land is on political consideration to secure vote bank while contending that the Government Orders were issued in pursuance of directive principles of State policy.

Finally, it is contended that the Courts have been consistently maintaining restraint in interfering with the policy matters. Thus, there is distinction between presence of the judicial review and maintaining judicial restraint apart from that there is “laxman rekha” between three organs of a State, that the executive is acting within its frontier. Finally, requested to dismiss the writ petition.

Respondent No.4 admitted about passing of Government Orders and the scheme formulated by the State for allotment of house site plots to houseless poor vide G.O.Ms.No.367 Revenue (Assignment – I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department dated 02.12.2019. The said Government orders are issued in pursuance of a policy of the

Government to provide house plots to landless poor. Respondent No.4 also admitted the endorsement made by him that the land is not available in Tenali Municipality.

Respondent No.4 denied the allegation that the volunteers are demanding money while contending that in the absence of volunteers, the said allegation cannot be examined.

Respondent No.4 also denied the allegation that the house site pattas are being allotted to ruling party supporters, requested to dismiss the writ petition.

During hearing, ***Sri V.S.R.Anjaneyulu, learned counsel for the petitioners, raised the following contentions***:

(a) G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 are too vague and they were issued contrary to the Andhra Pradesh Revenue Board Standing Order 21 and the A.P.Act 9 of 1977, additional guideline vide G.O.Ms.No.99 dated 31.03.2020 for allotment of house site and execution of conveyance deed vide clause (d) is not consistent with object.

(b) Additional guidelines issued in G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 permitting the beneficiary to sell the property after completion of 5 years would defeat the very object of providing house site for construction of shelter to the houseless poor, who are living below the poverty line.

(c) The said Government Orders are too vague with regard to selection process and eligibility; and inconsistent to one

another.

(d) Exclusive allotment of house site to women is in contravention of preamble of the Constitution of India and Articles 14, 15 (1) and 21 of the Constitution of India besides violation of Human Rights.

(e) The State also did not take into consideration cases where widower, who is living with his children, and a transsexual, who are eligible for allotment satisfying the requirements under the said Government Orders and it amounts to denial of equal opportunity to get benefit of distribution of natural resources like house site.

(f) Allotment of Ac.0.01 cent in the Municipalities and Ac.0.01 ½ cent in villages is inadequate and the State did not consider the effect on the right of privacy, growth of children both spiritual, educational, mental and physical and impact on the health also.

(g) Granting Ac.0.01 cent in the Municipalities and Ac.0.01 ½ cent in the villages is virtually putting an end to their growth educationally, spiritually, and it may cause health hazards to the members of those families. He relied on several decisions in support of his contentions, which will be referred at appropriate stage.

Sri Ponnavolu Sudhakar Reddy, learned Additional Advocate General raised the following contentions.

(a) Undisputedly, G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019, G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 and G.O.Ms.No.99 dated 31.03.2020 were issued by the State

as policy decision in discharge of their obligation under Article 39 of the Constitution of India and it is for the benefit of poor houseless persons, thereby such policy decision of the State cannot be interfered with by this Court and if the Court interferes with such policy decision, it would amount to judicial over reach.

(b) The petitioners are residents of Tenali and wives of petitioner Nos.1 to 3 were allotted house site in the scheme known as "***Navratnalu – Pedalandariki Illu***", but without disclosing the said fact, the present writ petition is filed, as such they are disentitled to claim any relief in the writ petition.

(c) There is no vagueness and inconsistency in the said Government Orders impugned in the writ petition and on the other hand, there is any amount of certainty regarding procedure for allotment viz. eligibility, selection process and rights of such beneficiaries after allotment of plots.

(d) There are no sufficient pleadings in the writ petition enabling the respondents to answer those allegations raised by the learned counsel for the petitioners, and it is for the petitioners to establish the violation of any provisions of statute or Constitution of India, but the petitioners failed to raise specific pleas in the petition.

(e) Though Article 15 (1) of the Constitution of India prohibits discrimination on the ground of sex, religion, caste etc., an exception is carved out to Article 15 (1) i.e. 15 (3) of the Constitution of India, which permits the State to make a special provision for the benefit of women and that the

allotment of house sites to the household women would fall within exception contained in Article 15 (3) of the Constitution of India.

(f) The main reason for allotment of house site in the name of women is to avoid sale of land by male members of the family for their vagaries and with a hope that the women will protect the property.

(g) The very allotment of property on concessional rate of Rs.1/- per plot is nothing but alienation of the property and when there is no prohibition regarding alienation in future by the beneficiary, grant of permission to alienate property after 5 years of construction of house would not frustrate the very purpose since such beneficiaries are disentitled to claim house site patta in future and that it is not violative of provisions of A.P.Act 9 of 1977 and B.S.O. 21 and it is inconsonance with B.S.O.21.

(h) Sri Ponnavolu Sudhakar Reddy, learned Additional Advocate General would submit that the entire process is over, except construction of houses, even if houses are constructed, it will not infringe the constitutional right guaranteed under Articles 14, 15 (1) and 21 of the Constitution of India or any right under any Statute, while requesting to dismiss the writ petition, upholding both the Government Orders impugned in the writ petition.

In view of the specific contentions of both the learned counsel for the petitioners and the learned Additional Advocate General, this Court has to examine –

(1) The scope of interference of this Court while exercising power under Article 226 of the Constitution of India in the policy or administrative decisions of the State,

(2) Vagueness as pointed out by the learned counsel for the petitioners and denied by the learned Additional Advocate General,

(3) Inconsistency between three Government Orders with reference to B.S.O.21 and the A.P.Act 09 of 1977; and the terms and conditions of the allotment as per Government Orders,

(4) Discrimination of women from men, transsexual while allotting house site plots irrespective eligibility of men and transsexual for allotment with reference to Articles 14, 15 (1) and 15 (3) of the Constitution of India, and

(5) Inadequate residential accommodation/shelter to the families living below the poverty line, affect of it on the right of privacy, health, psychological and spiritual development, economic growth, if so, is it violative of Article 21 of the Constitution of India, and Human rights guaranteed under Universal Declaration of Human Rights as well as international covenants on Civil and Political rights?

P O I N T No1:

Scope of judicial interference in the policy and administrative decisions of the State while exercising power under Article 226 of the Constitution of India by the High Court.

The petitioners in the writ petition itself made a vague allegation that the policy to allot/assign the Government land is to

prevent perpetuation of injustice and feudal order and to prevent concentration of material resource of the community in the hands of citizens, few. Assignment of the land to the weaker sections of the Society is in furtherance of a Constitutional obligation imposed upon the State to secure the citizen, an adequate means of livelihood and shelter without any discrimination vide "***Francis Coralie Mullin v. Administrator, UT of Delhi***" (referred supra), and that this Court can interfere with the policy decisions, if such policy decisions are against the constitutional goal, violative of fundamental rights guaranteed under Part III of the Constitution of India or violative of any statutory provision.

Whereas, Sri Ponnavolu Sudhakar Reddy, learned Additional Advocate General, mainly concentrated on permissibility of interference of this Court with the policy decision taken by the State and in paragraph No.4 of the counter, respondent No.1 raised a specific plea about the power of the High Court to interfere with such policy decisions of the State while exercising power under Article 226 of the Constitution of India is limited and relied on the judgments of the Hon'ble Apex Court in "***the State of UP v. Johrimal***" , "***Ekthashakti foundation v. Government of NCT of Delhi***", "***Premier Tyres Limited v. Kerala State Road transport***" (referred supra). On strength of the principles laid down in the above judgments, it is contended that the impugned Government Orders are issued based on the policy decision taken by the State and this Court cannot examine the legality of the said Government Orders, but can examine only to the extent of violation of fundamental rights guaranteed to any citizen of India or any other statutory provisions and shall not interfere with the administrative or policy decisions of

the State in casual and routine manner, while requesting to dismiss the writ petition.

In view of these contentions, it is necessary to examine the scope of Article 226 of the Constitution of India and power of this Court to interfere with the policy decisions of the State.

Undisputedly, power of this Court under Article 226 of the Constitution of India is wider than the power under Article 32 of the Constitution of India since Article 32 is limited to violation of fundamental rights, whereas Article 226 permits to examine the validity of any action of the State or even policy decisions in view of the language employed under Article 226 of the Constitution of India.

It has already been pointed out that the power of the High Court to issue the writs under Article 226 can be exercised for a twofold purpose, viz., the enforcement of (a) fundamental rights, as well as of (b) non-fundamental or ordinary legal rights."

The High Court has jurisdiction to review an administrative order which is perverse or arbitrary as also where there is non-compliance with statutory duty by statutory authority. But the court will not go into factual findings as held in "***M.P.State Co-op Dairy Federation Ltd. v. Rajnesh Kumar Jamindar***[9]"

While exercising power, the court has to see whether the impugned action or decision has been taken reasonably and intelligently and that it relates to the purpose for which it is to be exercised. The authority cannot act whimsically or arbitrarily. It should be done objectively, fairly and reasonably. (Vide: ***Banglore Medical Trust v. B.S.Muddappa***[10]) . It is also observed that when wide power is vested in the government, it has to be exercised with

[9] (2009) 15 SCC 221
[10] AIR 1991 SC 1902

greater circumspection. Greater is the power, greater should be the caution. Though large or wide powers are given, the same are not absolute and exercise of power should only be made for public good and for public cause. Hence interference is permissible, on the principle that there is violation of public trust doctrine, which means action should be for good governance. (Vide: ***Consumer Action Group v. State of Tamil Nadu***[11]). Interference is also called for when the conditions necessary for taking or initiating action are not satisfied. It is a case of want of jurisdiction and hence ultra vires. (Vide: ***Barium Chemicals v. Company Law Board***[12])

If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One such mode of exercising power, known to law is the “doctrine of proportionality”. It was observed that the Government and its department, in administering the affairs of the country are expected to honour their statements of policy or intention and treat the citizen with full personal consideration without abuse of discretion. There can be no "selective application” or “pick and choose of the government norms or unfairness, arbitrariness or unreasonableness. Any violation of the above rule is a ground for interference.” (Vide: ***Coimbatore District Central Co-operative Bank v. Employees’ Association***[13] and ***Noida Enterpreneurs Association v. Noida***[14]”)

The Supreme Court declared broad principles of judicial review i.e., illegality, irrationality and procedural impropriety have greatly been overtaken by other developments, as for example, generally not

[11] AIR 2000 SC 3060
[12] AIR 1967 SC 295
[13] (2007) 4 SCC 669
[14] AIR 2007 SC 1161

only in relation to proportionality and human rights, but also in the direction of principles of legal certainty, notably legitimate expectation. But it restrains itself in relation to interference in policy matters. (Vide: ***Union of India v. S.B.Vohra***[15]). Thus, there is no clear interdict on the power of the High Court to interfere with the policy decision.

Faith reposed on the judiciary by the people of India, stands on a much higher rung than on any other organ of the State. This is because of the judiciary being considered as the land of last resort. Judiciary has always indulged itself when it has found that the illumination of the Indian Constitution has started losing its sheen. Constitution stands at the pinnacle of the pyramid, under which everything done by State to diverge from its reach can be tested by the Indian judiciary. As the ultimate guardian of the rights of the people of this populous land, Indian courts have found themselves at the helm of affairs, in dealing with the State machinery. Judicial review, when undertaken in consonance with the Indian Constitution, brings realisation to the hopes and aspirations of millions. Inheritance of powers, does not come without limits. Judicial restraint forms part and parcel of judicial review. Under the mandate of the Indian Constitution, courts cannot sit to harmonise the functions of different organs of the State. Their role gets restricted in providing access to those who bring to light the darkness springing out State actions. This darkness can only be tested under the parasol of Indian Constitution. True realisation of the Preamble of the Constitution, which represents the knot of all the Articles of the Constitution, comes home only when each organ of the

[15] AIR 2004 SC 1402

State works in conformity within the horizons set down for their limits.

A policy decision taken by the Government is not liable to interference, unless the Court is satisfied that the rule-making authority has acted arbitrarily or in violation of the fundamental right guaranteed under Articles 14 and 16 of the Constitution of India. Dealing with the powers of the Court while considering the validity of the decision taken in the sale of certain plants and equipment of the Sindri Fertilizer Factory, which was owned by a public sector undertaking, to the highest tenderer, the Supreme Court in "***Fertilizer Corpn. Kamgar Union (Regd.), Sindri v. Union of India***[16]", while upholding the decision to sell, observed that:

> *"35.* ... We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

In "***State of M.P. v. Nandlal Jaiswal***[17]", the change of the policy decision taken by the State of Madhya Pradesh to grant licence for construction of distilleries for manufacture and supply of country liquor to existing contractors was challenged. Dealing with the power of the Court in considering the validity of policy decision relating to economic matters, it was observed that:

> *34.* But, while considering the applicability of Article14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by

[16] (1981) 1 SCC 568
[17] (1986) 4 SCC 566

> the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in ***K. Garg v. Union of India***[18]. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature."

The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind this Court now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution as held by the Apex Court in ***State of M.P. v. Nandlal Jaiswal*** *(referred supra).*

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[18] (1981) 4 SCC 675

A policy decision of the Government whereby validity of contract entered into by Municipal Council with the private developer for construction of a commercial complex was impugned came up for consideration in "***G. B. Mahajan v. Jalgaon Municipal Council***[19]", and it was observed that:

> "The criticism of the project being "unconventional" does not add to or advance the legal contention any further. The question is not whether it is unconventional by the standard of the extant practices, but whether there was something in the law rendering it impermissible. There is, no doubt, a degree of public accountability in all governmental enterprises. But, the present question is one of the extent and scope of judicial review over such matters. With the expansion of the State's presence in the field of trade and commerce and of the range of economic and commercial enterprises of Government and its instrumentalities there is an increasing dimension to governmental concern for stimulating efficiency, keeping costs down, improved management methods, prevention of time and cost overruns in projects, balancing of costs against time scales, quality control, cost-benefit ratios, etc. In search of these values it might become necessary to adopt appropriate techniques of management of projects with concomitant economic expediencies. These are essentially matters of economic policy which lack adjudicative disposition, unless they violate constitutional or legal limits on power or have demonstrable pejorative environmental implications or amount to clear abuse of power. This again is the judicial recognition of administrator's right to trial and error, as long as both trial and error are bona fide and within the limits of authority."

In "***Premium Granites v. State of T.N.***[20]", while considering the court's powers in interfering with the policy decision, it was observed that:

> *54.* It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be.

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[19] (1991) 3 SCC 91

[20] (1994) 2 SCC 691

While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil in "***M.P. Oil Extraction v. State of M.P.***[21]**"**, the court held:

> "*41.* After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within it competence to frame a policy for the administration of the State. 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**.** 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 functionary 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 stature 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 emphasised. 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 entrance misgivings about the role of judiciary in outstepping 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 field.
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> (emphasis supplied)

The validity of the change of government policy in regard to the reimbursement of medical expenses to its serving and retired employees came up for consideration before Supreme Court

[21] (1997) 7 SCC 592

in ***"State of Punjab v. Ram Lubhaya Bagga***[22]**"**. The earlier policy upholding the reimbursement for treatment in a private hospital had been upheld by this Court but the State of Punjab changed this policy whereby reimbursement of medical expenses incurred in a private hospital was only possible if such treatment was not available in any government hospital. Dealing with the validity of the new policy, the court observed that:

> *25.* Now we revert to the last submission, whether the new State policy is justified in not reimbursing an employee, his full medical expenses incurred on such treatment, if incurred in any hospital in India not being a government hospital in Punjab. Question is whether the new policy which is restricted by the financial constraints of the State to the rates in Aiims would be in violation of Article 21 of the Constitution of India. So far as questioning the validity of governmental policy is concerned in our view it is not normally within the domain of any court, to weight the pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except whether it is arbitrary or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints.
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> *(emphasis supplied)*

In ***Narmada Bachao Andolan v. Union of India***[23], there was a challenge to the validity of the establishment of a large dam. It was held by the majority that:

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[22] (1998) 4 SCC 117
[23] (2000) 10 SCC 664

> It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution.

In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic polices and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is parliament and not the Courts as held by the Apex Court in "***Balco Employees' Union (Regd) v. Union of India***[24]"

In "***T.N. Education Department Ministerial and General Subordinate Services Assn. v. State of T.N.***[25]", noticing the jurisdictional limitations to analyse and fault a policy, the Apex Court opined that:

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[24] (2002) 2 SCC 333
[25] (1980) 3 SCC 97

> The court cannot strike down a G.O., or a policy merely because there is a variation or contradiction. Life is sometimes contradiction and even consistency is not always a virtue. What is important is to know whether mala fides vitiates or irrational and extraneous factor fouls

The wholesome rule in regard to judicial interference in administrative decisions is that if the Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, courts would keep off the same. (Vide: ***Federation of Railway Officers Association v. Union of India***[26])

On review of the law laid down by the Apex Court in various judgments (referred above), interference of the High Court while exercising power under Article 226 of the Constitution of India is not totally taken away, but the Court must exercise reasonable restraint while interfering with such policy decisions to avoid judicial over-reach. Therefore, keeping in view the principles laid down in the above judgments, this Court has to examine the other contentions. If the Court finds that the policy decisions of the State are violative of any fundamental right guaranteed under the Constitution of India or Human rights, the Court is bound to interfere with such policy decisions.

P O I N T Nos.2 and 3:

Vagueness and inconsistency between Government Orders as contended by the petitioners and denied by the respondents, with reference to B.S.O.21, the A.P.Act 9 of 1977 and the terms and conditions of allotment as per the Government Orders.

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[26] (2003) 4 SCC 289

The petitioners are, undisputedly, landless and houseless poor and they were not allotted any house site despite the directions issued by the High Court of Andhra Pradesh at Hyderabad in W.P.No.45475 and 46463. It is contended by the respondents that the wives of petitioner Nos.1 to 3 were allotted house site/plot under the scheme of "***Navaratnalu – Pedalandariki Illu***", which is the subject matter of G.O.Ms.No.367 dated 19.08.2019, but so far as other petitioners are concerned, it is not their case that the women household were allotted house site under the scheme "***Navaratnalu – Pedalandariki Illu***". Irrespective of allotment or non-allotment of house site patta to any of the petitioners, it is necessary to examine the issue of vagueness and inconsistency between G.O.Ms.No.367 dated 19.08.2019, G.O.Ms.No.488 dated 02.12.2019 and G.O.Ms.No.99 dated 31.03.2020 and whether they were issued contrary to B.S.O.21 and the A.P.Act 9 of 1977?

Policy guidelines were issued by the State in G.O.Ms.No.367 dated 19.08.2019. According to policy guideline No.3, ***house site Pattas shall be issued with the conditions laid down in BSO-21 and in terms of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (as amended from time to time).***

Whereas, in G.O.Ms.No.488 dated 02.12.2019 the State issued additional guidelines for allotment of house sites to 25 lakhs beneficiaries. In paragraph No.2 of the said G.O., it is stated that, deliberations were held on distribution of House sites/Dwelling units in the State and certain decisions have been taken to implement the programme successfully to cover all eligible families. Therefore, Government issued additional guidelines in addition to the Policy

guidelines already issued in G.O.Ms.No.367 dated 19.08.2019 to all District Collectors in the state for implementation of distribution of House sites/Dwelling units under "***Navaratnalu – Pedalandariki Illu***" Programme.

Taking advantage of language employed in paragraph No.2 i.e. additional guidelines in addition to the policy guidelines already issued in G.O.Ms.No.367 dated 19.08.2019, Sri V.S.R.Anjaneyulu, learned counsel for the petitioners, contended that there is any amount of inconsistency between G.O.Ms.No.367 dated 19.08.2019 and G.O.Ms.No.488 dated 02.12.2019 as the guidelines issued in G.O.Ms.No.488 are not in supersession of guidelines issued in G.O.Ms.No.367 dated 19.08.2019. Thus, there is any amount of vagueness and inconsistency between few clauses of the said G.Os. issued for allotment of house site by granting patta or executing conveyance deed. Hence, it is appropriate to refer to the relevant policy guidelines issued in G.O.Ms.No.367 and additional guidelines issued in G.O.Ms.488 and they are extracted hereunder:

G.O.Ms.No.367 dated 19.08.2019	G.O.Ms.No.488 dated 02.12.2019
The Hon'ble Chief Minister of Andhra Pradesh as part of the flagship program "***NAVARATNALU – PEDALANDARIKI ILLU***" has announced for distribution of 25 lakh House Site Pattas to all the eligible beneficiaries residing in Rural & Urban areas on Saturation Mode irrespective of Caste, Creed or Religion to facilitate the construction of houses for the homeless poor. The process of issue of House Site Pattas will be taken up on mission mode and distribution to all eligible houseless poor will be taken up on the day of Ugadi-2020.	Therefore, Government hereby issue following "additional guidelines" in addition to the Policy guidelines already issued in G.O. 1st read above to all District Collectors in the state for implementation of distribution of House sites/Dwelling units under "***Navaratnalu – Pedalandariki Illu***" Programme:- 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. v. Encroachers in objectionable government lands shall be evicted immediately after giving house sites in the present scheme.

"1.Objective: To provide a House Site Patta to the Homeless poor people in Rural/Urban areas in order to facilitate the construction of a Pucca House under the flagship programme "***Navaratnalu – Pedalandariki Illu***". 2. SIZE/EXTENT OF HOUSE SITE PATTA: A) Rural Area: i. One House Site Patta shall be issued for an extent of 1.5 Cents to an eligible household in the name of woman beneficiary of the house. The patta shall be handed over to the beneficiary on the day of Ugadi, 2020. ii. The Housing Department shall issue sanction for construction of Individual Housing Unit to the eligible beneficiary under the available schemes in phased manner. B) Urban Area: i. Housing Units shall be constructed following the G+3 pattern at the rate of about 100 units in an extent of Ac.1.00cts. ii. House Site Patta shall be issued as Undivided Land Share for an extent of about 1.0 Cent to an eligible beneficiary in the name of the woman of the house. The patta shall be handed over to the beneficiary on the day of Ugadi, 2020. iii. Housing Units will be constructed and handed over to the beneficiaries by APTIDCO/ ULB/ other government agency under available schemes. 3. House Site Pattas shall be issued with the conditions laid down in BSO-21 & in terms of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (As amended from time to time). 4. All individual plots shall be given a Unique Number similar to the 11-digit Bhoodhar Number.	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.

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. 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 a valid Aadhaar Card. Aadhaar details shall be collected only with the consent of beneficiary. 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. 15. CANCELLATION: The allotment of House Site Patta will be cancelled immediately in case, if it is established that the same has been obtained by fraud or suppression of facts. The cancelled House Site Patta will be allotted to other eligible beneficiary.	

On comparison of original guidelines and additional guidelines, the object of original guidelines is to provide house site to houseless poor, but as per condition No.3, house site pattas shall be issued with the conditions laid down in BSO – 21 and in terms of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 (as amended from time to time). As per additional guideline (x) and (xii) issued in G.O.Ms.No.488, the present house site allotment is treated as concessional allotment and not a free assignment. 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. 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.

As per G.O.Ms.No.367 allotment is based on B.S.O.21 and in terms of the A.P.Act 9 of 1977. Hence, it is appropriate to advert to B.S.O.21, which is a guideline for the revenue officials for disposal of the Government land.

B.S.O.21 deals with "assignment of House-site in villages and towns". This standing order applies to the disposal of house sites for private purposes only whether to individuals, firms or societies and whether the grant is free or is made on payment of the full or a concessional value for the land. Assignments for industrial, commercial or co-operative purposes will be in addition to the usual conditions of assignment be subject to conditions on the lines of these prescribed in paragraph 6 of the standing order No.24 *mutatis mutandis*, the conditions in sub-paragraph (2) of the paragraph being followed in cases in which the full market value of the land is paid by the assignee and those in sub-paragraph (i) in other cases. The disposal of buildings sites for public purposes is governed by Standing Order No.24. Section 1 deals with allotment of site in villages. It specified scale of grant, and limit is 10 cents both for house construction and for cattle shed in villages. Clause (2) of Section -1 deals with procedure in dealing with applications. Clause 2 (x) of Section 1 prescribes procedure for preparation of plotted sketches. As per clause 2(x) of section 1, plotted sketches of the sites to be granted should invariably be prepared. Also measurements should be taken connecting the sites with any

permanent or semi-permanent marks in the neighbourhood or union survey stones where they exist with a view to the sites being located in the event of disputes. All these measurements should be entered in the plotted sketches which should form part of the assignment records. Clause (xiii) of Section 1 deals with extent of house site allotted. According to it, Tahsildars should not grant house sites in excess of 10 cents nor sites for separate cattle-sheds in excess of 4 cents without the previous sanction of the Revenue Divisional Officer.

Similarly, section II deals with assignment of house sites in towns. Clause (8) defined the word “town”, which includes municipal area or Cantonment Act is in force or the place has a population of not less than 5,000 inhabitants residing in houses more or less contiguous, not in scattered collections as hamlets and has distinctly urban character such as that of a market town.

Clause (10) (i) of section II deals with scale of grant for building purposes. According to it, in towns portions of house-site at the disposal of Government may be granted for building purposes in accordance with a scale fixed or to be fixed by Collectors with reference to the requirements of their districts or of particular towns or quarters of a town and subject to the conditions laid down in paragraphs 11 to 15 of section II of B.S.O.21. The scale may be altered by Collectors, from time to time, according to their discretion, but every such alteration should be previously published in the District Gazette.

Clause (11) deals with procedure to be observed for disposal of applications. At the same time, clause 11 (vi) says that except as provided in paragraph 14, all vacant Government lands in towns

shall be offered for sale in public auction. The auction should be held by the Tahsildar or by some officer duly authorized by him on the date fixed in the notification or any subsequent date to which the sale may be adjourned for good reason, of which fact due public notice shall be given and the lot should be knocked down to the highest bidder. In cases where any expenditure has been incurred in lying out land including the site applied for as house-sites or in providing roads thereon or in other-wise fitting it for occupation, a proportionate portion thereof shall be fixed as the upset price. In cases where the Government is bound, e.g., under Section 184 of the Andhra Pradesh Municipalities Act or any other Act to provide a road of otherwise to make the land fit for occupation, the estimated cost of a proportionate portion of the estimated cost of making a road or otherwise making the land fit for occupation shall be fixed as the upset price. In towns surveyed on the town survey system the successful bidder should in address pay the cost of survey and demarcation as laid down in Standing Order No.34-A, paragraph 17. In the case of other towns, he should pay the cost of survey and demarcation as provided in paragraph 2 (ix) of Section I of B.S.O.21.

Thus, disposal of land is two types; one is free allotment by issue of assignment/patta and the other is by auction sale.

Here, the Government allotted land at concessional rate of Rs.1/- subject to payment of Rs.10/- towards cost of stamp paper and Rs.10/- towards lamination charges.

Besides above two G.Os., the State also issued another G.O.Ms.No.99 Revenue (Lands-1) department dated 31.03.2020 for providing housing to all families living in below poverty line both in

urban and rural areas. Clause (b) and (d) reads as follows:

> "B. Allotment Price:
>
> i. The house site shall be allotted at concessional rate of Re.1/- (One Rupee) as the house site is being allotted to people Below Poverty Line (BPL) to enable them to construct own house.
>
> ii. Hence, Rs.21/- (Re.1/- towards cost of House site, Rs.10/- towards cost of stamp paper and Rs.10/- towards lamination charges) shall be collected from the beneficiary."

Similarly, clause (d) is also relevant for the purpose of deciding controversy herein, which is as follows:

> D. Allotment of House site Patta:
>
> i. House site patta will be allotted in the form of conveyance deed to avoid duplication of beneficiaries, eliminating bogus beneficiaries as the deed contains security features like the Photographs & Thumb Impressions and Signatures of parties along with their details (Executant/Claimant), Property details (Schedule), Witnesses. This is apart from the security features like watermark, emblems etc., existing on the stamp paper.
>
> ii. This is to enable and ensure that the beneficiaries get the loans from the banks for construction of house.
>
> iii. Sale of vacant House site is prohibited. However, the beneficiary after construction of house and occupying it for a minimum period of 5 years can transfer, in case of any necessity, subject to conditions imposed by financial institutions."

A bare reading of clause (b) and (d), allotment is on concessional rate of Rs.1/- and conveyance deed is being executed by the concerned in favour of the allottee. Thus, the language employed in clause (b) and (d) of G.O.Ms.No.99 dated 31.03.2020 directly indicates that the allotment is only by executing conveyance deed on payment of Rs.1/-. Thus, the transaction of allotment of site is nothing but sale as defined under Section 54 of the Transfer of Property Act. If clause (3) of G.O.Ms.No.367 dated 19.08.2019, additional guideline issued in G.O.Ms.No.488 dated 02.12.2019 and further guidelines issued in G.O.Ms.No.99 dated 31.03.2020 if read in conjunction with other, there is any amount of inconsistency between these clauses. When once the transaction of allotment of

land is outright sale as defined under Section 54 of the Transfer of Property Act, any condition or restriction repugnant to the interest crated therein is void. When conveyance deed is executed and registered with the Registrar (for the purpose of registration, Tahsildars are designated as Registrars under the Registration Act), the question of following B.S.O.21 and provision of A.P.Act 09 of 1977 as enumerated in clause (3) of G.O.Ms.No.367 dated 19.08.2019 does not arise. Such inconsistency in the guidelines lead to chaos and on account of such inconsistency, it is impracticable to implement either of the guidelines or cancel the allotment made in terms of the G.Os.

As per Board Standing Orders, grant shall be subject to the conditions set out in the order of assignment to be issued in such case, viz. land assigned shall be heritable but not alienable., otherwise it would not fall within the definition of “assigned land” as defined under Section 2 (b) of the Act 09 of 1977.

But G.O.Ms.No.488 dated 02.12.2019 and G.O.Ms.No.99 dated 31.03.2020 totally relaxed the conditions of heritability and non alienability of the land allotted to the petitioner, it is taken away from the purview of assigned land as defined under Section 2 (b) of the Act 09 of 1977. Thereby, the question of issuing pattas in terms of B.S.O. 21 subject to provisions of A.P.Act 09 of 1977 does not arise and clause (3) of G.O.Ms.No.367 dated 19.08.2019 become redundant, in case such alienability is permitted. The purpose of allotment is only to provide house site to houseless poor, when the State allotted the site by way of sale, it would defeat the very object of allotment. Therefore, the clauses (x) (xi) and (xii) in G.O.Ms.No.488 and clause (b) and (d) of G.O.Ms.No.99 are

hereby declared as illegal and contrary to original guidelines, liable to be set aside.

The main object of allotment of land is only to provide shelter to houseless or homeless poor in both rural and urban areas as it is the obligation of the State to provide shelter to the poor as per the directive principles of state policy vide Article 39 of the Constitution of India. (extracted in the earlier part of order)

In view of Article 39 of the Constitution of India the State can distribute material resources to subserve the common good. Here, the scheme "***Navaratnalu – Pedalandariki Illu***" is taken up as a policy decision by the Government. At the same time, the policy must be fair and reasonable. Here, in this case, granting permission to sell property after five years of construction of house will have serious consequence in future, though they are debarred from claiming allotment in future. The avowed object of scheme is to provide shelter to the houseless poor permanently. If the beneficiary has a right to sell the property after five (5) years, again such beneficiary will become houseless poor and sometimes they may misuse the situation prevailing in the State and obtain allotment in different ways. When the State intends to provide permanent shelter to the houseless poor, incorporating such condition allowing them to alienate the property after five (5) years is against the object of scheme. On account of permission granted to the allottees to sell the property, the very object of the scheme is being defeated. On the allotment of house site, the houseless became owners of house sites and on construction, owner of house; after sale, it is nothing but restoring status quo ante i.e. he will be a houseless poor again consequent upon the sale. Distribution of material resources of the

community is not for making money by the houseless poor, taking advantage of the policy decision of the Government. Therefore, the additional ground Nos.(x) (xi) and (xii) issued in G.O.Ms.No.488 dated 02.12.2019 is contrary to the object of the scheme and Article 39 of the Constitution of India. Therefore, additional guidelines (x) (xi) and (xii) not only defeat the very purpose of allotment of house sites to the landless poor, but also violates Article 39 of the Constitution of India, besides B.S.O.21. Hence, additional guideline Nos. (x) (xi) and (xii) issued in G.O.Ms.No.488 are illegal, arbitrary and not in the interest of houseless poor. On the other hand, the same is defeating the very object of allotment of house sites to the houseless poor and in violation of Article 39 of the Constitution of India. Hence, the additional guidelines (x) (xi) and (xii) G.O.Ms.No.488 dated 02.12.2019 are hereby declared as illegal, arbitrary and violative of Article 39 of the Constitution of India, contrary to the object of allotment of house site.

As discussed above, clauses in three G.Os (referred supra) are inconsistent to one another and they are vague, impracticable for implementation and enforcement. Therefore, while upholding clause (3) of G.O.Ms.No.367 dated 19.08.2019, clause (x) (xi) and (xii) of G.O.Ms.No.488 dated 02.12.2019 and clause (b) and clause (d) of G.O.Ms.No.99 dated 31.03.2020 are declared as illegal, arbitrary and inconsistent with one another. Therefore, on this ground alone, the said clauses are liable to be set aside. Accordingly, the point is answered.

P O I N T No.4:

Discrimination of women from men, transsexuals while allotting house site plots irrespective eligibility of men and transsexual for allotment with reference to Articles 14, 15 and 21 of the Constitution of India and International Covenants on Human Rights with reference to equality.

One of the major contentions of the learned counsel for the petitioners is that the respondents discriminated men and transsexual from women in allotment of house site under the scheme "***Navaratnalu – Pedalandariki Illu***" and allotted house sites to women exclusively, which is contrary to the preamble of the Constitution of India and violative of Articles 14, 15 (1) and 21 of the Constitution of India, besides violative of Universal Declaration of Human Rights as well as international covenants on Civil and Political rights, international covenants on economic, social and cultural rights and discriminating transsexual is contrary to the law laid down by the Apex Court in "***National Legal Services Authority v. Union of India***[27]", requested to set aside clause (2) of G.O.Ms.No.367 dated 19.08.2019 as it amounts to 100% reservation in allotment of house site to women.

Whereas, respondents raised a plea that the allotment of house site in the name of woman is only for the benefit of family and not for individual. Since the petitioners are living below the poverty line, there is every possibility of misusing the property if allotment is made in the name of male, as such grant of patta in favour of women household is for the benefit of members of the family. It is

[27] (2014) 5 SCC 438

further contended that though Article 15 (1) prohibits discrimination, Article 15 (3) is an exception to Article 15 (1) of the Constitution of India which permits protective discrimination to women and children from men, as such the State based on doctrine of protective discrimination, made allotment of house sites in favour of women household to avoid further complications. Hence, it is not violative of any of the Articles of the Constitution of India and Universal Declaration of Human Rights etc.

It is an undisputed fact that the allotment was made exclusively in the name of women household as per G.O.Ms.No.367 dated 19.08.2019. Clause (2) of G.O.Ms.No.367 dated 19.08.20219 reads as follows:

2. SIZE/EXTENT OF HOUSE SITE PATTA:

A) Rural Area:

i. One House Site Patta shall be issued for an extent of 1.5 Cents to an eligible household in the name of woman beneficiary of the house. The patta shall be handed over to the beneficiary on the day of Ugadi, 2020.

ii. The Housing Department shall issue sanction for construction of Individual Housing Unit to the eligible beneficiary under the available schemes in phased manner.

B) Urban Area:

i. Housing Units shall be constructed following the G+3 pattern at the rate of about 100 units in an extent of Ac.1.00cts.

ii. House Site Patta shall be issued as Undivided Land Share for an extent of about 1.0 Cent to an eligible beneficiary in the name of the woman of the house. The patta shall be handed over to the beneficiary on the day of Ugadi, 2020.

iii. Housing Units will be constructed and handed over to the beneficiaries by APTIDCO/ ULB/ other government agency under available schemes.

A close perusal of the above clauses, the proposal to allot house site in the name of women both in rural and urban areas is an undisputed fact. At the same time, it is stated in paragraph No.1 of G.O.Ms.No.367 dated 19.08.2019, that the respondents intend to

allot 25,00,000 house site to all the eligible beneficiaries residing in rural and urban areas on saturation mode "***irrespective of Caste, Creed or Religion to facilitate the construction of houses for the homeless poor***."

The intention of the State is clear from the preamble of the G.O.Ms.No.367, they intend to discriminate men, transsexual from women by conspicuously omitting the word "sex" obviously for the reasons best known to the State. The legality and validity of such discrimination is to be examined with reference to various provisions pointed out by the learned counsel for the petitioners and the law laid down by the Apex Court and other Courts. At this stage, it is appropriate to advert to the preamble of the Constitution of India, which reads as follows:

> *"WE, THE PEOPLE OF INDIA**,** having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:*
>
> *JUSTICE, social, economic and political;*
>
> *LIBERTY of thought, expression, belief, faith and worship;*
>
> *EQUALITY of status and of opportunity;*
>
> *and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation"*

The preamble of the Constitution itself provided equality clause. At the same time, Article 14 guarantees fundamental right of equality. As per Article 15 (1) there is prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. However, carved out an exception under Article 15 (3), which enable the State to make special provision to women and children, which is known as protective discrimination.

In the case on hand, the State in discharge of its obligation to provide house site to houseless poor under Article 39 (a) and (b) of the Constitution of India, took a policy decision, issued

G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019. However, Article 39 of the Constitution of India itself indicates that the material resources of the State shall be distributed equally among equals. Despite "equality" clause in preamble, equal protection of laws enunciated under Article 14 and prohibition of discrimination on grounds of religion, race, caste, sex or place of birth under Article 15 of the Constitution of India, State consciously omitted the word "sex" in the preamble of G.O.Ms.No.367 dated 19.08.2019, decided to allot house site plot to women household as per guideline No.2 of the said Government Order as extracted in earlier paragraphs.

Such discrimination of men, transsexual from women is violative of Article 14, 15 (1) and the 'equality' clause under preamble of the Constitution of India as contended by the learned counsel for the petitioners. Of course, learned Additional Advocate General took advantage of Article 15 (3) which is an exception to Article 15 (1) of the Constitution of India, carved out by the framers of the Constitution of India with an avowed object to provide special protection to women and children by invoking doctrine of protective discrimination.

To substantiate the contentions of the petitioners, learned counsel for the petitioners relied on the Division Bench judgment of the High Court of Andhra Pradesh in "***P.Katama Reddy v. Revenue Divisional Officer, Anantpur***[28]". In the facts of the judgment, a policy decision to provide 100% reservation was taken in allotment of Fair Price shops to women by the State. The Division Bench of the

[28] 1997 (6) ALT 548

High Court of Andhra Pradesh at Hyderabad while referring to judgment in "***Government of A.P. v. P.B. Vijaya Kumar***[29]" held that as the Government framed a scheme for running fair price shops by appointing agents (dealers), it cannot discriminate, ousting men from being allotted in entirety, as that will be violative of equality clause under Article 14 of the Constitution in general and Article 15(1) in particular and that ratio laid down by the Supreme Court in "***State of M.P. v. Nandlal***[30]" is applicable, in which, dealing with the preference to women in granting excise license, it was held that it is the monopoly of the State and the State can run the same, but once a decision is taken by the State to allot it to private individuals, then equality clause is applicable and if there is a violation of equality clause under Article 14, then the Governmental action can be set at naught. It is apt to extract the relevant proposition :

> "But, before we do so, we may, at this stage, conveniently refer to a contention of a preliminary nature advanced on behalf of the State Government and Respondent Nos.5-11 against the applicability of Article 14 in a case dealing with the grant of liquor licences. The contention was that trade or business in liquor, so inherently pernicious that no one can claim any fundamental right in respect of it and Article 14 cannot, therefore, be invoked by the petitioners. Now, it is true, and it is well settled by several decisions of this Court including the decisions in "***Har Shanker v. Deputy Excise and Taxation Commissioner***[31]", that there is no fundamental right in a citizen to carry on trade or business in liquor. The State under its regulatory power has the power to prohibit absolutely every form of activity in relation to intoxicants - its manufacture, storage, export, import, sale and possession. No one can claim as against the State the right to carry on trade or business in liquor and the State cannot be compelled to part with its exclusive right or privilege of manufacturing and selling liquor. But, when the State decides to grant such right or privileges to others, the State cannot escape the rigour of Article 14. It cannot act arbitrarily or at its sweet will. It must

[29] AIR 1995 SC 1648
[30] [1987]1SCR1
[31] [1975]3SCR254

> comply with the equality clause while granting the exclusive right or privilege of manufacturing or selling liquor It is, therefore, not possible to uphold the contention of the State Government and Respondent Nos.5-11 that Article 14 can have no application in a case where the licence to manufacture or sell liquor is being granted by the State Government. The State Government cannot ride rough shed over the requirement of that Article."

While referring to the said principle, the Division Bench of the High Court of Andhra Pradesh at Hyderabad held that in the allotment of fair price shops, the Government cannot act at its will and pleasure and has got to follow the equality clause contained under Article 14 in general and Article 15(1) of the Constitution in particular, subject to such permissible discrimination, under Article 15(1) read with special reservation, permitted under Article 15(3) of the Constitution of India.

In "***P.Katama Reddy v. Revenue Divisional Officer, Anantpur***" (referred suirpa), the Division Bench of the High Court of Andhra Pradesh at Hyderabad also relied on another judgment of the Apex Court in "***Indra Sawhney v. Union of India***[32]", and concluded as follows:

> "(i) that women reservation in the matter of allotment of fair price shops shall be fixed at 30%:
>
> (ii) that while making the women reservation as specified above, the Government has to follow the other reservations already in vogue;
>
> (iii) that the fair price shop dealers selected from women quota shall have to be adjusted both in the reserved category and also open category;
>
> (iv) that the Government, while making reservations both for women and other categories, shall ensure that reservations should not exceed 50% of the fair price shops;
>
> (v) all notifications pursuant to the impugned memo stand set aside.
>
> (vi) that the Government shall issue instructions in accordance with the above directions, to all the appointing authorities for fair price shops dealers; and
>
> (vii) that each revenue division/circle shall be taken as a unit."

[32] AIR 1993 SC 477

If these principles are applied to the present facts of the case, allotment of house sites exclusively to women is a clear violation of principle of equality enshrined under preamble, Article 14 and 15 (1) of the Constitution of India.

In "***Government of A.P. v. P.B. Vijay Kumar***" (referred supra), the Apex Court held that "making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16. The special provision, which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. Article 15 deals with every kind of State action in relation to the citizens of this country. Every sphere of activity of the State is controlled by Article 15(1). There is, therefore, no reason to exclude from the ambit of Article 15(1), employment under the State. At the same time, Article 15(3) permits special provisions for women. Both Articles 15(1) and 15(3) go together."

It was further held in that decision that the power conferred by Article 15 of the Constitution is wide enough to cover the entire range of State activity including employment under the State, that the insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped, and that it is in order to eliminate the socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Clause (3) is placed in Article 15, that the avowed object is to strengthen and improve the status of the

women and that an important limb of this concept of gender equality is creating job opportunities for women. The Supreme Court also condemned that to say that under Article 15(3), job opportunities for women cannot be created, would be to cut at the very root of the underlying inspiration behind this Article. Reservation can be provided by invoking Article 15 (3) of the Constitution of India, but Article 15 (1) and 15 (3) shall go together. As such, special provision for women cannot be faulted, but conferment of any benefit exclusively on women is found fault by the Division Bench of the High Court of Andhra Pradesh at Hyderabad.

State legislature is competent to provide for reservation of seats for women in the local authorities as the subject of local Government is left exclusively to the State Legislature and there is nothing in the Constitution which prohibits the State Legislature from providing separate representation for women. Article 15 (3) which is only a proviso to Article 15 (1) must be read with it. By virtue of the proviso the State may discriminate in favour of women against men but it cannot discriminate in favour of men against women. The exception made by Article 15 (3) to Article 15 (1) applies as well to existing laws as those which the State may make in future. (Vide: "***Dattatraya Motiram More v. State of Bombay***[33]")

Even according to the law laid down in the above judgment, a special reservation can be provided for women in the local body elections. But it is not a case of 100% reservation which conferring benefit on the women taking advantage of Article 15 (3) of the Constitution of India.

Very reading of the principle laid down by the Apex Court, it is

[33] ILR 1953 Bom 842

clear that special provision can be made for women and children as permitted under Article 15 (3) of the Constitution of India, but total discrimination of men, transsexual from women is prohibited. The expression "special provision for" denotes provisions especially for women & children as distinguished from the general which is applicable to all alike and that such special provision is 'for' i.e. in favour of women or children. The idea is to enable the State to make special provision in favour of women and children to protect their interest which the framers of the Constitution thought in their wisdom demand protection in the present context of social well-being in this country.

In the facts of "***S.Renuka v. State of A.P.***[34]" recruitment has taken up for appointment of Judges to Families Courts and Mahila Courts in the cadre of District and Sessions Judges, Grade-II. All the posts of District and Sessions Judge, Grade II created for such appointment reserved for women candidates though 100% reservation was not permissible under the Rules. The Supreme Court held as follows:

> "It is settled law that no right accrues to a person merely because a person is selected and his or her name is put on a panel. The Petitioners have no right to claim an appointment. Even otherwise, the selection was contrary to the rules in force at that time. There could not be 100% reservation for women. Also the reservation policy had not been adhered to. The posts which are created are posts of District and Sessions Judges, Grade II. There are no separate posts of Judges of Family Courts and Mahila Courts. Thus the Petitioners could not be appointed as Judges of Family Courts and Mahila Courts in ex-cadre posts even provisionally. This would amount to creation of Ex-cadre posts not sanctioned by the Government. No fault can be found with the High Court being in favour of not appointing the Petitioners.
>
> The unfortunate part is that even though Family Court and Mahila Courts have been established no appointments have been made. Thus, till date the Family Courts and Mahila Courts are not being manned."

[34] (2002) 5 SCC 195

In "***Union of India v. Permanand Singh***[35]" 40 posts of Telephone Operator were reserved for female candidates. It was held that no provision available in recruitment rules for reservation of posts of Telephone operators exclusively for women but while issuing advertisement, the posts thrown open to female candidates only, hence, the same is unconstitutional.

Thus, from the principles culled out in the above judgments, it is clear that making special provision for allotment of house sites exclusive to women under policy which is known as "***Navaratnalu – Pedalandariki Illu***" though not directly a reservation, which would fall under Article 15 (4) and 16 (4) of the Constitution of India, but it is only protective discrimination of women from men, transsexual.

In "***Smt.Savitri Agrawal v. K.K.Bose***[36]", the Apex Court held as follows:

> "Article 15(1) forbids discrimination on the ground of sex but Article 15(3), which is in the nature of a proviso to Article 15(1). permits discrimination in favour of women and children by the State if it makes a special provision therefor. It does not permit such discrimination unless a special provision is made for the purpose. Since it is the special provision which enables the State to do what would otherwise have been unconstitutional, the special provision must be distinct from the action and the making thereof must precede the action sought to be justified thereunder. The use of the word 'provision' also indicates that the special provision must be made before a legal discrimination in favour of women or children can be made. In the Webster Twentieth Century Dictionary, two of the meanings given to the word 'provision' are:--
>
> (1) something provided, prepared or supplied for the future; and
>
> (2) preparatory arrangement or measure taken in advance for meeting some future needs.
>
> It thus appears that the special provision is to be made, so that it may be applied to cases or matters which have not yet been decided.
>
> The effect of Article 15(3) is that any special provision made for women or children cannot be challenged on the ground that there is no

[35] 1999 Supreme Court Cases (L&S) 625
[36] AIR 1972 All 305

> reasonable basis for the classification having regard to the object of the provision; such a provision is protected from attack on the ground of contravention of Articles 14 and 15(1). The special provision must be for benefiting generally women or children as a class. The word 'provision' includes within its meaning a legislative enactment, a rule, a regulation and a general order and it is in this sense that it has been used in Article 15(3). What Article 15(3) contemplates is the making of special provision for women as a class and not the making of provision for an individual woman. It is not possible to read the word 'provision' as including a decision given in a particular case or matter as it can lead to arbitrary and anomalous results. If that could be done, then an officer, before whom three cases are pending, may give preference to women in one, to a member of the scheduled caste or tribe in another and to the most deserving person only in the remaining case; or he may give preference to women in all the cases or to members of the scheduled castes and tribes in all the cases or may decide all the cases on merits. Such a result was not intended by the Constitution makers.
>
> (emphasis supplied)

The policy of protective discrimination is an endeavor to achieve social justice in India. It aims at granting special privileges to the socially backward and underprivileged section of the society, most commonly the scheduled castes, scheduled tribes, other backward classes, and women. These are the sections of people who often face racial or caste-based discrimination through centuries by the privileged classes on account of their differences based on sex, religion, place of birth, race, and most prominently based on the institution called the caste system. Efforts had been made by the founding fathers of the Constitution to address the malady through affirmative action. These actions are justifiably enshrined in the Constitution of India as "*Protective Discrimination*". In India, the Constitution through its various provisions guarantees the rights of the downtrodden and underprivileged by way of reservations or quota in educational institutions, employment, and parliamentary privileges as well as command the legislatures to legislate special

provisions for their overall advancement. Article 14 of the Constitution does not speak of mere formal equality but embodies real and substantive equality. The essence of equality as a facet of the Constitutional tenets adopted to strike out inequalities arising on account of vast social and economic disparities among the citizens and is thus consequently an indispensable element of social and economic justice. However, absolute equality is impossible. The right to equality under part III of the Constitution therefore is not absolute and is subject to reasonable exceptions. Equality does not essentially mean that all laws should be universal and general in application neither all laws can be applicable in all circumstances. Explaining the concept of equality, the Supreme Court in ***"Marri Chandra Sekhar Rao v. Dean, Seth G.S Medical College***[37]***"***, observed that, equality must be a living reality for the people. Those who are unequal in status and opportunity cannot be treated by identical standards. Article 14 permits reasonable classification between potential underprivileged and privileged sections of citizens based on definite schemes but strikes out class legislation. Reasonable classification explains that classification or segregation must not be artificial, evasive, and arbitrary. Such classifications must be based on the rule of intelligible differentia which differentiates between different classes or group of persons from those left out of the group. Most importantly, there must be rational nexus between the differentia and the object sought to be achieved. (Vide:***K.Thimmappa v. Chairman, Central Board of Directors, SBI***[38]")

Article 15(1) restricts the state from unreasonable bias or

[37] 1990 (3) SCC 130
[38] AIR 2001 SC 467

adverse distinction from one another only on account of caste, sex, race, religion, and place of birth. However, when the discrimination rests only on these grounds, Article 15(1) comes to play. There is an intrinsic correlation between Article 14 and Article 15. Whilst these articles guarantee equality of opportunity and equality of treatment to all, neither of these articles prohibits reasonable classification. It means that special treatment meted out to a particular class of citizen by the State on account of some special reasons and circumstances is justifiable, but should be on reasonable grounds.

Article 15(3) enables the State to confer special rights to women, and children. This provision empowers the State to make special provisions and enactments in favor of women and children for their all-round upliftment in the society. This provision is specially designed to strengthen and improve the status of women.

In "***State of Madras v. Champakam Dorairajan***[39]", *a landmark* judgment on reservation, the decision of Madras Government to reserve seats in the State Medical and Engineering Colleges for different communities on the grounds of religion and caste in the proportion of students in each community was challenged as violative of Article 15(1). The state government contended that the order was made in furtherance of the Directive Principle of State Policy enshrined in Article 46 of the Constitution. Although the Apex court held the impugned order is void, it was observed that the State must enforce only the justiciable provision of the Constitution. The court gave a literal interpretation to the Constitutional provisions which led to the insertion of Clause (4) to Article 15.

[39] AIR 1951 SC 226

Where the essence of the right to equality is pervading throughout the constitution, it also speaks of special treatment to a particular section. The very idea of granting special privilege to depressed and backward classes is termed as 'protective' or 'positive' discrimination.

The special provision/protective discrimination contemplated under Article 15 (3) of the Constitution of India which the State may make to improve women's participation in all activities under the supervision and control of the State can be in the form of either affirmative action or reservation. It was also held in "***Government of A.P. v. P.B. Vijaya Kumar***" (referred supra), the State may fix a quota for appointment of women in Government Services. Also, a rule saying that all other things being equal, preference would be given to women to the extent of 30% of the posts is valid. It was stated therein that though Article 15 (1) prohibits discrimination on the ground of sex, Article 15 (3) carves out permissible departure from the rigor of Article 15 (1) of the Constitution of India. Women as a class neither belong to a minority group nor are they regarded as forming a Backward Class. India has traditionally been a male dominated society and, therefore, presently women suffer from many special and economic disabilities and handicaps. It thus becomes necessary that such condition be created and necessary ameliorative steps be taken, so that women as a class may make progress and are able to shed their disabilities as soon as possible. This principle is reiterated by clause (1) of Article 15 of the Constitution of India by providing that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them". Article 15 (3) is an exception to Article 15 (1) of the

Constitution of India, which is intended for empowerment of women and to make them financially more sound. It is intended for empowerment of women within the permissible limits as held in "***Government of A.P. v. P.B. Vijaya Kumar***" (referred supra). In employment, reservation can be provided to women in terms of Article 15 (4) and 16 (4) of the Constitution of India, but it must be read together with Article 15 (3) of the Constitution of India, otherwise it is difficult to construe these provisions harmoniously.

What does the expression "Special Provision" under Article 15 (3) of the Constitution of India means? The "special provision" which the State may make to improve women's participation in all activities under the supervision and control of State can be in form of either affirmative action or reservation. It includes the power to make reservation for women. Talking about the provision giving preference to women, the Court held that this provision does not make any reservation for women. It amounts to affirmative action. It operates at the initial stage of appointment and when men and women candidates are equally meritorious. Under Article 15 (3) both reservation and affirmative action are permissible in connection with employment or posts under the State. Article 15 is designed to create an egalitarian society.

Here, in this case, a positive action is taken by the State to allot house sites to women household not for their improvement or empowerment, but such reservation in allotment of house site must be within the permissible limit or not, is a question to be decided keeping in view the principle laid down in "***Government of A.P. v. P.B. Vijaya Kumar***" (referred supra), where 30% reservation is created and the same is questioned, but the Court did not accept

the contention raised by the petitioners therein, since such positive discrimination is within reasonable or permissible limits.

In support of the affirmative action taken by the State, learned Additional Advocate General relied on the judgment of the Apex Court in "***Vijay Lakshmi v. Punjab University***[40]", wherein the Division Bench upheld the contention of the State that provision to attend women as principal of women college cannot be held to be violative of right of equality since it is special provision for treatment of women under Article 15 (3) of the Constitution of India.

The said principle has no application to the present facts of the case for the reason that it is a case where appointment was made to Girls College/Women College, and contact with a man by many women/girls may seriously affect the privacy of a girl or women. So, in the circumstances, the Supreme Court held that it is a permissible discrimination.

Sri V.S.R.Anjaneyulu, learned counsel for petitioners, while contending that the special provision under Article 15 (3) of the Constitution of India must be within a reasonable/permissible limit, otherwise the same has to be struck down as it is violative of Article 15 (1) read with Article 14 of the Constitution of India, he placed reliance on "***Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh***[41]" wherein the Apex Court held that the distribution of largesse like allotment of land by State and its agencies/instrumentalities shall be done in fair and equitable manner.

In "***Charu Khurana v. Union of India***[42]" the association of

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[40] AIR 2003 SC 3331
[41] (2011) 5 SCC 29
[42] (2015) 1 SCC 192

Make-up artists refused membership to female members on the basis of gender discrimination. When the same is challenged, the Apex Court concluded that the discrimination done by Association could not take route of discrimination solely on basis of sex; the Association really played foul of statutory provisions; and if female artist did not get opportunity to enter into arena of being member of Association, she could not work as female artist. Likes of petitioners were given membership as hair dressers, but not as make-up artist, and that there was no fathomable reason for the same and denial of issue of card to work as make-up artists on ground that one was not resident of state, had no rationale. As the clauses relating to membership and domicile were vioaltive of statutory provisions and constitutional mandate, quashed such clauses and directed the Association to register the petitioners therein as their members.

The aim of the scheme is to provide house site to houseless, but not to provide house site to women exclusively. Article 14 and Article 15 (1) of the Constitution of India deals with equality. However, an exception is carved out under clause (3) of Article 15 of the Constitution of India. Similarly, Article 15 (3) and 16 (4) deals with equality and equal opportunities in public employment and Article 15 (3) while permitting special provision to women and children, similarly, SCs and STs and other BCs. Same analogy can be applied either to Article 15 (1), 15 (3), 15 (4) and Article 16 (4) of the Constitution of India.

Article 14 of the Constitution of India states that: “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” In practice this guarantee has been read to infer ‘substantial’ equality as opposed to

'formal' equality, as judicially explained and elaborated upon in series of judgments of the Apex Court and other Courts in India. The latter dictates that only equals must be treated as equals and that unequal may not be treated as equals. This broad paradigm itself permits the creation of affirmative action by way of special laws creating rights and positive discrimination by way of reservations in favour of weaker classes of society.

Article 15 is an extension of Article 14 which talks about "equality among individuals" and "equality before the law". It has been reiterated by the Apex Court in number of decisions including the ***Indra Sawhney v. Union of India***" (referred supra). Article 15 derives its entire power from Article 14 as Article 15(3) is not a stand-alone constitutional provision, but nestled within the Articles 14,15 and 16 equality scheme. The use of the phrase *nothing in this Article*, as a precursor to Article 15(3) suggests that where a legislative classification might *otherwise* have fallen foul of the non-discrimination guarantee of Article 15(1), Article 15(3) would save it. However, Article 15(3) is itself a *part* of Article 15, suggests that the goal of such classification must also fit within the concept of equality. Consequently, laws making "special provisions" for women (and children) ought to be judicially reviewed to find out whether or not they bear some connection with remedying the historical and structural subordination of women. This necessitates that the principle aim of Articles 14 and 15 (1) to treat the equals equally. But Clause (3) of Article 15 is a special provision and both the provisions have to be harmonised keeping in mind the fact that both are but the restatements of the principle of equality enshrined in Article 14.

In "***Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar" and Ors***[43]", it was held that "the Constitution permits valid classification founded on an intelligible differentia distinguishing persons or things grouped together from others left out of the group. And such differentia must have a rational relation to the object sought to be achieved by the law."

In "***State of Kerala v N.M. Thomas[44]"***, it was held by Apex Court that Articles 14, 15 and 16 are to be read together and they together constitute the guaranteed right of equality which requires the State not only to abstain from discrimination but actually bring about equality.

In "***Charan Singh v Union Of India***[45]", it was observed that "the language used in Article 15(3) is similar to that of Article 15(4). This guarantee is an extension of specific application of the general principles of Equality contained in Article 14". It has been held by the Apex Court that Articles 14, 15 and 16 forming part of the same constitutional goal of guarantees which are supplementary to each other.

From the above proposition of law laid down by the Apex Court in number of decisions, it is established that Articles 14, 15 and 16 forms part of the same scheme of equality enshrined under the Constitution and any enabling provision made in favour of weaker section under Articles 15 and 16 must be in consonance with the principles of equality under Article 14. The limit upon the reservation is an empathetic approach of protecting the equality principles. It aims at the formation of an egalitarian order, free from

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[43] [1959] SCR 279
[44] (1976) 2 SCC 310
[45] ILR 1979 Delhi 422

exploitation, the fundamental equality of humans and to provide support to the weaker sections of the society and where from there is a disparity to make them equal by providing protective discrimination.

Article 14 guarantees equality before the law or the equal protection of the laws. Be, it a matter of distribution of State largesse; the Government is obligated to follow the Constitutionalism, the state action cannot be arbitrary and discriminatory and cannot be guided by extraneous considerations, which is opposed to equality. There cannot be any legislation in violation of equality, which violates the basic concept of equality as enshrined in Part III of the Constitution. The concept of equality cannot be pressed to commit another wrong. The concept of equality enshrined in Article 14 of the Constitution is a positive concept. It is not a concept of negative equality. It cannot be used to perpetuate an illegality. Article 14 is to be understood in the light of the Directive Principles, as observed in ***Indra Sawhney v. Union of India***" (referred supra). The classification made cannot be unreasonable. It can be on reasonable basis. *It cannot be arbitrary but must be rational. It should be based on intelligible differentia and must have rational nexus to the object sought to be achieved.*

In the present case, the aim of the scheme is to provide house site to houseless poor as per clause (1) of the G.O.Ms.No.367 dated 19.08.2019, which is as follows:

> "1.Objective:
>
> To provide a House Site Patta to the Homeless poor people in Rural/Urban areas in order to facilitate the construction of a Pucca House under the flagship programme "***Navaratnalu – Pedalandariki Illu***".

The objective of the scheme is to provide house site to homeless poor, but not to women. Therefore, the policy to allot house site in favour of women is not inconsonance with the object of the scheme as per clause (1) of G.O.Ms.No.367 dated 19.08.2019. Hence, allotment of house site exclusively in the name of women is contrary to the objective of the scheme and there is no direct nexus between the objective in clause (1) and clause 2 (a) and (b) of G.O.Ms.No.367 dated 19.08.2019.

Sri V.S.R.Anajneyulu, learned counsel for the petitioners, would contend that allotment of house site exclusive to women amounts to creating 100% reservation in allotment based on the policy, and such 100% reservation for allotment of house site impermissible under law.

In view of this contention, it is appropriate to advert to the judgment of the Apex Court in "***Chebrolu Leela Prasad Rao v State of Andhra Pradesh***[46]", where the State of Andhra Pradesh created 100% reservation in favour of tribles for appointment of teachers to work in triable areas. The same was challenged before the Apex Court and the Constitutional Bench of the Apex Court held that the 100% reservation would amount to unreasonable and unfair and cannot be termed except as unfair and unreasonable and is arbitrary and violative of Article 14 of the Constitution.

Finally, the Apex Court concluded that creation of 100% reservation is opposed to principle of equality after referring the law laid down in various earlier judgments in "***Indra Sawhney v. Union of India***" (referred supra), "***M.R.Balaji v. State of Mysore***[47]", "***State***

[46] (2020) SCC Online SC 383
[47] 1963 Supp 1 SCR 439

of Kerala v. N.M.Thomas" (referred supra), arrived at conclusion as follows:

> "The 100 percent reservation has been provided. It cannot be said to be a case of classification that has been made Under Article 16(1). Assuming, for the sake of argument, it is to be a case of classification Under Article 16(1), it would have been discriminatory and grossly arbitrary without rationale and violative of constitutional mandate."

Thus, 100% reservation to any class is impermissible under law in the employment. In the instant case, 100% reservation is provided to women for allotment of house site is contrary to the principle laid down by the Constitutional Bench of the Apex Court in "***Chebrolu Leela Prasad Rao v State of Andhra Pradesh***" (referred supra).

Similarly, in "***R.Chitralekha v State of Mysore***[48]", it was laid down by the Court that a little relaxation is permissible with great care. Reservation is an exception to the general rule. The quantum of reservation should not be excessive and societally injurious.

Similar to Article 16(4) and 15(4), Article 15(3) is an enabling provision that provides for special provisions to be made in favour of women and children. The purpose behind insertion of this Article is also for the reinstatement of the equality principle enshrined in Article 14. Thus, the provisions under Article 15(3) similar to Article 16(4) should be balanced against the guarantee held out to every citizen under equality enshrined in Article 15(1).

The policy of the Andhra Pradesh government impinges upon the right of the other members of the economically weaker sections. This housing scheme has been launched with the purpose of providing basic amenities to the poor sections and not for upliftment of the status of the women. There is a difference between

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[48] (1964) 6 SCR 368

empowerment of women and upliftment of women by creating 100% reservation to women. The scheme is not intended for empowerment of women or for upliftment of women, thereby there is no reasonable nexus between the object in clause (1) of G.O.Ms.No.367 dated 19.08.2019 and allotment of plot as stated in clause (2) exclusively in favour of women. When there is no reasonable nexus for creating such special provision to women in clause (2) of the G.O.Ms.No.367 and object of the said G.O., the very creation of 100% reservation in favour of women for allotment of house site is in contravention of principle of equality enshrined in Article 14 and 15 (1) of the Constitution of India. Though, there is little relaxation to create such provision in the scheme or any enactment by the State, 100% reservation in allotment of house site to women household is against the total concept of equality enshrined in Article 14 and 15 (1) of the Constitution of India.

The Apex Court in "***Chebrolu Leela Prasad Rao v State of Andhra Pradesh***" (referred supra) had an occasion to discuss about the effect of arbitrariness in the State acts or policy. The Apex Court while referring to "***S.R. Chaudhuri v. State of Punjab***[49]", "***Col. A.S. Iyer v. V. Balasubramanya***[50]" "***Ajay Hasia and Ors. v. Khalid Mujib Sehravardi***[51]" "***Maneka Gandhi v. Union of India***[52]", "***Ramana Dayaram Shetty v. International Airport Authority of India***[53]", held that when the act of the State is illegal, arbitrary and violative of provisions of Article 14 of the Constitution of India, the Court can interfere with such decision of the State either on the administrative or quasi judicial.

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[49] (2001) 7 SCC 126
[50] (1980) 1 SCC 634
[51] (1981) 1 SCC 722
[52] (1978) 1 SCC 248
[53] (1979) 3 SCC 489

As discussed above, in the instant case, clause (2) of G.O.Ms.No.367 dated 19.08.2019 is not in consonance with the clause (1) and that there is no rationale behind clause (2) in allotment of house site to women household alone and it is nothing but transgression of Constitutional limitation enunciated under Article 14 and 15 (1) of the Constitution of India though it is part of concept of equality. Therefore, clause (2) of G.O.Ms.No.367 dated 19.08.2019 is arbitrary and violation of Article 14 and 15 (1) of the Constitution of India.

Taking into consideration the hypothetical situation where a bachelor, widower with children living below poverty line, they are not entitled to claim the benefit of scheme "***Navaratnalu – Pedalandariki Illu***". Does it amount to distribution of resources based on equality is a question to be decided. If the principle laid down by the Apex Court in "***Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh***" (referred supra), certainly it amounts to discrimination of eligible men from women and they will remain as houseless poor forever on account of denial of house site allotment under the scheme "***Navaratnalu – Pedalandariki Illu***". Similarly, if a woman obtains divorce after allotment of house site, husband and children would remain houseless poor. These hypothetical situations were not visualised and taken into consideration by the State while taking such policy decision. Thus, it directly amounts to depriving eligible men to claim the benefit under the said scheme, which is violative of Article 14 of the Constitution of India and contrary to the obligation that vested on the State to distribute material resources among the citizens equally as prescribed under Article 39 of the Constitution of India.

In case of transsexuals, most of them are living below the poverty line and living by begging, without any shelter for their protection. They are facing lot of humiliation for the treatment extended to them. Though, it is the obligation of the State to take necessary steps to treat transsexual on par with men and women, the State did not take any positive action so far. Denial of allotment of house sites to transsexuals is violative of Article 14 of the Constitution of India since Article 15 speaks about men and women, but not about transsexuals, for the reason that the Constitution framers did not visualise such situation by the time of preparing Constitution of India.

In "***National Legal Services Authority v. Union of India***" (referred supra) the Apex Court highlighted the duty of the State to protect the transsexuals and held as follows:

> "In this country, Transgender community comprise of Hijras, enunch, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc. In Indian community transgender are referred as Hizra or the third gendered people. There exists wide range of transgender-related identities, cultures, or experience-including Hijras, Aravanis, Kothis, jogtas/Jogappas, and Shiv-Shakthis
>
> Though there may not be any statutory regime recognizing 'third gender' for these TGs. However, we find enough justification to recognize this right of theirs in natural law sphere. Further, such a justification can be traced to the various provisions contained in Part III of the Constitution relating to 'Fundamental Rights'. In addition to the powerful justification accomplished in the accompanying opinion of my esteemed Brother, additional raison d'etre for this conclusion is stated hereinafter.
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> We are in the age of democracy, that too substantive and liberal democracy. Such a democracy is not based solely on the rule of people through their representatives' namely formal democracy. It also has other percepts like Rule of Law, human rights, independence of judiciary, separation of powers etc.
>
> There is a recognition to the hard realty that without protection for human rights there can be no democracy and no justification for democracy. In this scenario, while working within the realm of separation of powers (which is also fundamental to the substantive democracy), the

> judicial role is not only to decide the dispute before the Court, but to uphold the rule of law and ensure access to justice to the marginalized section of the society. It cannot be denied that TGs belong to the unprivileged class which is a marginalized section.
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> The role of the Court is to understand the central purpose and theme of the Constitution for the welfare of the society. Our Constitution, like the law of the society, is a living organism. It is based on a factual and social realty that is constantly changing. Sometimes a change in the law precedes societal change and is even intended to stimulate it. Sometimes, a change in the law is the result in the social realty. When we discuss about the rights of TGs in the constitutional context, we find that in order to bring about complete paradigm shift, law has to play more pre-dominant role. As TGs in India, are neither male nor female, treating them as belonging to either of the aforesaid categories, is the denial of these constitutional rights. It is the denial of social justice which in turn has the effect of denying political and economic justice."

Further, the Apex Court in the said judgment held that "Centre and State Governments should also take steps for framing various social welfare schemes for the betterment of Transgenders. Centre and State Governments should take steps to create public awareness so that Transgenders will feel that they are also part and parcel of the social life and be not treated as untouchables. Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life."

Consciously, the State did not make any provision to provide shelter to transsexuals though they are citizens of India, entitled to claim equal protection and protection of laws under Article 14 of the Constitution of India. Failure to allot house site to transsexuals ignoring them totally would amount to depriving their right of equality guaranteed under Article 14 of the Constitution of India. If, house sites are not being allotted to them, they will remain homeless throughout their life as there is no possibility for them to acquire such property with the meagre amount or means they are getting.

On this ground also, allotment of house site only to women is violative of Article 14 and 15 (1) of the Constitution of India.

Learned counsel for the petitioners also contended that discriminating men, transsexuals from women is violative of international covenants on Human Rights. Article 7 of the Universal Declaration of Human Rights deals with equality before law. Article 17 of the Universal Declaration of Human Rights deals with right to own property. At the same time, Article 26 of International Covenant on Civil and Political Rights deals with “equality before law.”, they are tabulated as follows:

UNIVERSAL DECLARATION OF HUMAN RIGHTS	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 17: Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property	Article 26: All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

If the present case is examined in the background of Article 7 and 17 of the Universal Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights, where no exception is carved out for making special provision to women like Article 15 (3) of the Constitution of India, allotment of house sites exclusively to women is violative of Article 7 and 17 of the Universal

Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights, but the State while taking policy decision vide G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 did not consider the alleged human rights of men and transsexuals, thereby clause 2 of said G.Os can be held to be violative of Article 7 and 17 of the Universal Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights.

In "***National Legal Services Authority v. Union of India***" (referred supra), the Apex Court referred to several international covenants.

If the those covenants are applied to the present facts of the case, , the policy decision taken by the State, clause 2 of G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019 and G.O.Ms.No.488 Revenue (Assignment-I) Department, dated 02.12.2019 is a grave violation of right to equality of citizens guaranteed under Article 14, 15 (1) of the Constitution of India, and Article 7 and 17 of the Universal Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights.

When the Court found that allotment of house site exclusively to women is violative of Article 14, 15 (1) of the Constitution of India, such clauses in the Government Orders issued for exclusive allotment of house site to women are liable to be set aside.

As discussed in earlier paragraphs, the decision taken by the State to allot house sites exclusively to women is contrary to the law declared by the High Court of Andhra Pradesh at Hyderabad in

"***P.Katama Reddy v. Revenue Divisional Officer, Anantpur***" (referred supra) and the Apex Court in "***State of M.P. v. Nandlal Jaiswal***", "***Government of A.P. v. P.B. Vijaya Kumar***", "***Chebrolu Leela Prasad Rao v. State of Andhra Pradesh***" (referred supra). The policy decision taken by the State to provide protective discrimination by way of special provision provided under Article 15 (3) of the Constitution of India must be within permissible limits i.e. 30% (thirty percent) and apart from that giving preference to women exclusively is violative of Article 14 and 15 (1) of the Constitution of India besides violation of International Covenants on Human Rights by applying the principles laid down by the above judgments, guideline No.2 of G.O.Ms.No.367 dated 19.08.2019 is liable to be struck down as unconstitutional.

One of the contentions of learned Additional Advocate General is that the scheme formulated by the State for allotment of house sites to houseless poor is a prestigious programme appreciated by everyone in the State and in case any clause in the impugned Government Order is declared as illegal and arbitrary, it would affect 25,00,000 families besides loss to exchequer. No doubt, it will affect members of more than 25,00,000 families besides loss to the exchequer. But, this Court has to examine whether such laudable scheme can be sustained with such irregular and arbitrary clause.

While interpreting various clauses in the impugned Government Orders, the Court has to examine its effect or operation of the Statute or policy decision of State, which is the determining factor and not its purpose or motive. Accordingly the court should hold a law repugnant to the guarantee given by Art. 15(1), if as a result of the law, a person is denied any right or privilege solely

because of his religion, sex, caste, race or place of birth. In "***Punjab Province v. Daulat Singh***[54]" while a similar provision in Section 298 of the Government of India Act, 1935 was under challenge, Privy Council said that "it is not a question of whether the impugned Act is based only on one or more of grounds specified in Section 298(1), but whether its operation may result in a prohibition "only" on those grounds. The proper test as to whether there is contravention of sub-section is to ascertain the reaction of the impugned Act, on the personal right, conferred by the sub-section and while the scope and object of the Act may be of assistance in determining the effect of the operation of the Act on a proper construction of its provision, if the effect of the Act so determined involves an infringement of such personal right, the object of the Act, however ***laudable***, will not obviate the prohibition of sub-section (1)."

By applying this principle to the present facts of the case, though the scheme is laudable for the benefit of 25,00,000 families, the conditions in the impugned Government Orders are not only contrary to the object, but also violative of Article 14 and 15 (1) of the Constitution of India so also international covenants of Human Rights on equality of women, men and Transsexual as total allotment was to women only.

In view of my foregoing discussion, the point is held against the respondents and in favour of the petitioners declaring that guideline No.2 of G.O.Ms.No.367 dated 19.08.2019 is illegal, arbitrary and violative of Article 14, 15 (1) of the Constitution of India and defeating the object of scheme and Article 39 of the Constitution of India besides violative of Article 7 and 17 of the

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[54] AIR 1946 PC 66

Universal Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights and liable to be set aside. Accordingly, the point is answered.

P O I N T No.5:

The petitioners raised a vague plea in the petition about right to residence while referring to a judgment in "***Francis Coralie Mullin v Administrator, Union Territory of Delhi***" (referred supra) (Vide paragraph No.14 of the affidavit). However, the respondents denied the same while contending that it has no relevance to the present facts of the case, and it needs no consideration. (paragraph No.9 of the counter of respondent No.1).

Learned counsel for the petitioners, during hearing, raised several other contentions regarding inadequacy of site proposed to be allotted under impugned Government Orders, its impact on health, psychological and spiritual development, economic growth besides of violative of the Andhra Pradesh Building Rules, 2017 and such cluster of plots would cause health hazards to the residents of those colonies due to inadequacy of housing. On this ground also, he sought to set aside the impugned Government Orders.

Whereas, learned Additional Advocate General would contend that in the absence of specific pleadings, the Court is not required to adjudicate on such issue. Mere referring to judgment in "***Francis Coralie Mullin v Administrator, Union Territory of Delhi***" (referred supra) is not sufficient in the absence of details as to how the respondents violated various norms including the Andhra Pradesh Building Rules, 2017.

Learned Additional Advocate General further contended that there are no specific pleadings in support of the contentions urged

in the petition. In the absence of any pleading, the Court cannot look into such contention. In view of these rival contentions, it is appropriate to advert to law to decide whether this Court is competent to take cognizance of new plea raised for the first time during argument. When it is a pure question of law, arising from the record, can be raised for the first time, even before the Supreme Court (Vide: "***State of U.P. v. Anupam***[55]" and "***Tarini Kamal Pandit v. Profulla Kumar Chatterjee***[56]")

It is always the discretion of the Court either to allow or not to allow a new point to be taken for the first time during argument. (Vide: ***Rattan Lal v. Vardesh Chandar***[57])

At the same time, generally, parties are not allowed to take new pleas, but certain exceptions are carved out by the Apex Court in various judgments.

As a general rule, new plea is not allowed. But, there are exceptions. (1) Grounds based on facts which are clearly on record (Vide: ***Corporation of City of Nagpur v. Nagpur Electric Light and Power Co. Ltd.***[58]) (2) A plea going to the root of the jurisdiction of the inferior tribunal which is based on a decision of the High Court which was delivered subsequent to the filing of the writ petition. (Vide: ***Sharma M.S.M. v. Sri Krishna Sinha***[59]) (3) A pure question of law or constitutionality or in cases where the State is supporting the validity of law on a new ground. (Vide: ***Burrakor Coal Co. v. Union of India***[60])

New points are allowed to be taken when the same go to the

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[55] AIR 1992 SC 932
[56] AIR 1979 SC 1165
[57] AIR 1976 SC 588
[58] AIR 1958 Bom 498
[59] AIR 1959 SC 395
[60] AIR 1961 SC 954

root of the matter or are otherwise of considerable importance or had something to do with the interpretation of statute. Even though the petitioner had submitted to the jurisdiction of an authority which he had not questioned in the petition, the court allowed the petitioner to urge the point of jurisdiction as the same went to the root of the matter. (Vide: ***Arunachalam Pillai v. Southern Roadways Ltd.***[61]) On the question of interpretation of statute, the point was allowed to be taken for the first time in appeal. (See: ***Gandumogula Tatayya v. Jagapathiraju***[62]).

The State intend to allot house sites to 25,00,000 families. On an average, each family consists of 3 to 4 members. Since, the future of 25,00,000 families consisting of approximately one crore people is depending upon the adequacy of housing, this Court has undertaken this entire exercise for the wellbeing and future development of members of 25,00,000 families. Hence, I find that it is appropriate to consider the contentions of the learned counsel for the petitioners with reference to the law laid down by the Courts in various judgments, in the interest of public.

The law is clear that the question purely based on record though not specific plea is raised can be permitted to be urged for the first time during hearing, when there is no dispute regarding particular fact.

In the present case, the petitioners vaguely raised a plea in paragraph No.14 of the affidavit filed in support of the petition, but did not amplify the principle laid down therein obviously for the reasons best known to them. Thus, there is a vague plea, but not specifically pointing out the violations of human rights, effect of

[61] AIR 1960 SC 1191
[62] AIR 1967 SC 647

allotment of Ac.0.01 cent in Municipalities and Ac.0.01 ½ cent in Panchayat area, on the psychological, spiritual, economic development of members of the family and how it effects the privacy and health of individuals is raised for the first time, on account of allotment of house site of Ac.0.01 cent in Municipal areas and Ac.0.01 ½ cent only in Panchayat area. Since, it is an undisputed fact, when such point is raised, the Court cannot ignore such vague plea as it will have serious impact on the members of 25,00,000 families and their family members regarding their development in future, that apart, it is nothing but violation of fundamental right guaranteed under Article 21 of the Constitution of India besides violative of International covenants on Human rights regarding adequate housing. Keeping in view the principles laid down by the Apex Court in various judgments, I find that it is appropriate to examine the issue in detail though the plea is vague for the reason that it is a matter of serious violation of fundamental right guaranteed under Article 21 of the Constitution of India and various articles of international covenants regarding adequate housing. At the same time, World Health Organisation also issued certain guidelines with reference to health and housing.

It is an undisputed fact that as per Guideline No.2 of G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019, the State proposed to allot Ac.0.01 cent in Municipal Area and Ac.0.01 ½ cent in Grampanchayat, which I extracted in the earlier paragraph of the order. Therefore, allotment of limited extent of house site of Ac.0.01 cent in Municipal Area and Ac.0.01 ½ cent in Panchayat area is not in dispute.

The right to shelter was recognised by the Apex Court as

human right and it forms part of various international convents of Human rights. Right to adequate housing is also recognised as a Human Right. Article 11 of International Covenant on Economic Social and Cultural Rights deals with adequate standard of living, which reads thus:

> "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Similarly, Article 25 of the Universal Declaration of Human Rights recognised right to a standard of living, which is as follows;

> "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
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> Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection."

Article 17 of International Covenant on Civil and Political Rights recognised right to privacy, which is as follows:

> 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
>
> 2. Everyone has the right to the protection of the law against such interference or attacks.

Keeping in view the different articles in International covenants on Human Rights, I would like to advert to the law laid down by the Apex Court and various High Courts. The justiciability of the human right to adequate housing has been limited in India due to the absence of strong and rights-based laws and policies related to housing. Although India has ratified several international

human rights instruments, which mandate the guarantee and protection of the human right to adequate housing, it has not independently recognized or defined the right within its legislative or constitutional framework. The courts have often been inconsistent and even contradictory in their interpretation and treatment of the right to adequate housing, not necessarily recognizing it as an independent human right or providing human rights-based remedies. Various perspective pronouncements of the Apex Court and other High Court elaborated several aspects of the right to adequate housing, deriving primarily from the right to life and personal liberty. The 'right to life' is a Fundamental Right guaranteed under Article 21 of the Constitution of India, which states that, "No person shall be deprived of his life or personal liberty except according to procedure established by law."

The human right to adequate housing is recognized in international law, as opposed to the right to shelter, and provides wider legal protection and entitlements. However, in the majority of cases related to housing rights, Indian courts have referred to the 'right to shelter' instead of the 'right to adequate housing.

While adjudicating the right to housing, courts have frequently emphasized the 'indivisibility of human rights' as well as recognized other concomitant rights such as the human rights to water and food. In "***Ajay Maken v. Union of India***[63]", the High Court of Delhi held that "the right to housing is a bundle of rights not limited to a bare shelter over one's head. It includes the right to livelihood, right to health, right to education and right to food, including right to clean drinking water, sewerage and transport

[63] 260 (2019) DLT 581

facilities."

For example, Courts have also implicitly recognized, as an essential component of housing, the fundamental right to food and water in "Pani Haq Samiti v. Brihan Mumbai Municipal Corporation (Public Interest Litigation No.10 of 2012), the right to clean drinking water and sanitation in "***Fashion Proprietor Aswani Kumar Maity v. West Bengal State Electricity Distribution Co***.[64]" and "***R.Krishnasamy Gounder v. The State of Tamil Nadu***[65]" and, the right to privacy in "***Bibhuti Bhusan Chakraborty v. Deputy Registrar***[66]".

Courts have also established the right to electricity as an independent right linked to the right to housing in the case of "***Abhimanyu Mazumdar v. Superintending Engineer***[67]".

Thus, in catena of perspective pronouncements, various Courts considered the right of housing and effect of inadequacy of housing.

The Supreme Court of India, on several occasions, has held that the right to adequate housing is a human right emanating from the fundamental right to life protected by Article 21 of the Constitution of India. In several important judgments, the Apex court has clearly clarified the relationship between the right to housing and the right to life, as guaranteed by Article 21.

In its earliest conception of the right to shelter, the Supreme Court in "***Francis Coralie Mullin v Administrator, Union Territory of Delhi***" (referred supra), held as follows:

"8. We think that the right to life includes the right to live with human

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[64] AIR 2009 Cal. 87
[65] 2008 (8) MLJ 1037
[66] AIR 1997 Cal. 374
[67] AIR 2011 Cal. 64

> dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow beings."

Subsequently, in "***Olga Tellis v. Bombay Municipal Corporation***" (referred supra) the Supreme Court considered forced evictions as a violation of the rights to life and livelihood, arrived at conclusion that "an equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The eviction of the Petitioners from their dwellings would result in the deprivation of their livelihood."

Similarly, in "***Consumer Education and Research Centre v. Union of India***[68]", the Supreme Court held that the 'right to shelter' would mean and include the right to livelihood, a better standard of living, hygienic conditions in the work place, and leisure.

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[68] (1995) 3 SCC 42

In "***U.P. Avas Evam Vikas Parishad v. Friends Coop. Housing Society Ltd***.[69]" the Supreme Court further established that "the right to shelter is a fundamental right, which springs from the right to residence under Article 19 (1)(e) and the right to life under Article 21."

In "***State of Karnataka v. Narasimhamurthy***[70]" the Hon'ble Supreme Court affirmed the positive obligation of the state to fulfil the right to shelter/housing, held that "right to shelter is a fundamental right under Article 19(1) of the Constitution. To make the right meaningful to the poor, the State has to provide facilities and opportunity to build house. Acquisition of the land to provide house sites to the poor houseless is a public purpose as it is a constitutional duty of the State to provide house sites to the poor.

The Hon'ble Apex Court in an important pronouncement, "***Chameli Singh v. State of Uttar Pradesh***[71]" the Court elaborated the components of the right to adequate housing, held that "in any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised

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[69] AIR 1996 SC 114
[70] AIR 1996 SC 90
[71] (1996) 2 SCC 549

without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under at obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself."

Earlier in "***P.G. Gupta v. State of Gujarat***[72]", the Supreme Court considered the mandate of human right to shelter and read it into Article 19(1)(e) and Article 21 of the Constitution, the Universal Declaration of Human Rights and the Convention of Civil, Economic and Cultural Rights, held that it is the duty of the State to construct houses at reasonable cost and make them easily accessible to the poor. The aforesaid principles have been expressly embodied and in-built in our Constitution to secure socio-economic democracy so that everyone has a right to life, liberty and security of the person. Article 22 of the Declaration of Human Rights envisages that everyone has a right to social security and is entitled to its realisation as the economic, social and cultural rights are indispensable for his dignity and free development of his personality. It would, therefore, be clear that though no person has a right to encroach and erect structures or otherwise on footpath, pavement or public streets or any other place reserved or earmarked for a public purpose, the State has the Constitutional duty to provide adequate facilities and opportunities by distributing its wealth and resources for settlement in life and erection of shelter over their heads to make the right to life meaningful, effective and fruitful. Right to livelihood is meaningful because no one can live without means of this living, that is the means of livelihood. The deprivation of the right to life in that context would not only denude life of effective content and meaningfulness but it would make life miserable and impossible to live. It would, therefore, be the duty of the State to provide right to shelter to the poor and indigent weaker sections of the society in fulfilment of the Constitutional objectives.

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[72] 1995 (1) SCALE 653

The Supreme Court has also established the right to property as a human right, in the context of adverse possession. In "***Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation***[73]" the Apex Court declared that:

> 9. The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi-faceted dimension. The right to property is considered, very much to be a part of such new dimension.
>
> [emphasis added].

Similarly, in "***P.T. Munichikkanna Reddy v. Revamma***[74]" the Court held that:

> "40. There is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a constitutional or statutory right but also a human right [emphasis added].
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> 41. Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17: Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.
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> 42. Moreover, the Universal Declaration of Human Rights, 1948 under Section 17(i) and 17(ii) also recognizes right to property:
>
> 17 (i) Everyone has the right to own property alone as well as in association with others.
>
> (ii) No one shall be arbitrarily deprived of his property.
>
> 43. Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context."

The Hon'ble Supreme Court has unequivocally held that the human right to adequate housing as an integral aspect of the 'right to life' guaranteed under Article 21 of the Constitution of India.

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[73] (2013) 1 SCC 353
[74] (2007) 6 SCC 59

Moreover, the Supreme Court has expounded the various facets of adequate housing not limited merely to shelter, and also emphasized the positive duties of the State towards fulfilling the right.

The High Court of Andhra Pradesh at Hyderabad in "***Mala Pentamma v. Nizamabad Municipality***[75]", the High Court considered the right to housing, right to life, indivisibility of Human Rights, forced eviction, due process, compensation etc.

The Court recognized that the Respondents therein claimed to have taken up the cause of the general public in attempting to build sanitation facilities. However, it gave priority to the right to shelter/housing of the Petitioners and read it as an integral part of Article 21 of the Constitution of India. The Court stated that:

> 10. It is not in dispute that the respondents have taken up the cause for general public, but that by itself does not authorize the first respondent to deprive the petitioners of their shelter. Right to shelter, is a fundamental right, traceable to Article 21 of the Constitution of India and any action infringing of such a right, is amenable to writ jurisdiction under Article 226 of the Constitution of India
>
> [emphasis added].

The components of this right were further elaborated as involving just and humane work conditions, adequate facilities, pollution free water and air, and full enjoyment of life. The Court affirmed that:

> As stated earlier, right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21, a fundamental right which is an inalienable human right. The Apex Court in a decision "Samatha v. State of Andhra Pradesh (AIR 1997 SC 3297)", held that right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the children to develop in a healthy manner and in conditions of freedom and dignity. It is further observed that adequate facilities, just and human conditions of work, etc. are the minimum requirements which must exist in order to enable a person to live with human dignity and the State has

[75] 2005 (6) ALD 488

> to take every action. That apart, right to life includes the right to enjoyment of pollution free water and air for full enjoyment of life. Right to life enshrined in Article 21 means something more than mere survival of animal existence. The right to live with human dignity with minimum sustenance and shelter and all those rights and aspects of life which would go to make a man's life complete and worth living would form part of the right to life. Right to health and social justice was held to be fundamental right to workers. It was further clarified that any action infringing such a right is amenable to writ jurisdiction under Article 226 of the Constitution of India.
>
> [emphasis added].

In view of the law laid down by various High Courts and the Apex Court in various judgments, it is the duty of the Government to provide adequate housing for psychological, spiritual development and economic growth of the members of families of allottees. (vide: "***Chameli Singh v. State of Uttar Pradesh***" (vide referred supra).

Turning to the present facts of the case, as per Guideline No.2 of G.O.Ms.No.367 Revenue (Assignment-I) Department dated 19.08.2019, the State proposed to allot (or allotted) Ac.0.01 cent (48.4 square yards) in Municipal Area and Ac.0.01 ½ cents (72.6 square yards) in Grampanchayat. While preparing lay outs as per the Municipalities Act and Panchayat Raj Act, more particularly, the State has to provide public place for parks and other community purpose. But, it is not known whether such public place is provided in any of the layout or not? However, it is necessary to examine the issue with reference to various aspects.

In Re: ***Andhra Pradesh Building Rules, 2017 and impact on environment***:

At this stage, it is necessary to advert to the Andhra Pradesh Buildings Rules, 2017, which deals with various aspects regarding construction of residential and non-residential houses. As per the Municipalities Act and Panchayat Raj Act, a setback is to be left

while constructing residential houses.

As per the Andhra Pradesh Buildings Rules, 2017 while constructing building, owner has to leave set back. Chapter – VIII deals with development codes (provisions for non-high rise development). Rule 57 deals with permissible setbacks and height for all types of non-high rise buildings, which reads as follows:

"57. Permissible Setbacks & Height for All Types of Non-High Rise Buildings:

(1) The height of buildings permissible in a given site/plot shall be subject to restrictions in the areas notified as (a) Sites in Old /Existing Built up areas/Congested areas/Settlement/Gram Khantam and (b) Areas Prohibited for High Rise Buildings given in the Annexures.

(2) The minimum setbacks and permissible height as per Table – 17 and other conditions stipulated below shall be followed.

Since the issue involved in this case is about construction of a building in Ac.0.01 cent in Municipal areas and Ac.0.01 ½ cents in Gram Panchayats, serial Nos.1 and 2 deals with plot size of less than 50 and 50-100 square meters, which is extracted hereunder.

Sl. No	Plot Size (in Sqm) Above up to	Parking Provision	Height (in m) Permissible Up to	Building Line or Minimum Front Setback to be left (in m)					Minimum setbacks on remaining sides (in m)
				Abutting Road width					
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
1	Less than 50	-	7	1.5	1.5	3	3	3	-
2	50 – 100		7 10	1.5 1.5	1.5 1.5	3 3	3 3	3 3	- 0.5

As per the guidelines in table – 17, 1.5 meters set back in front is mandatory. If 1.5 meters set back is not relaxed, the site allotted by the State for construction is a bare minimum, it would not cater the need of any family.

In any view of the matter, approved layouts are not in consonance with the Andhra Pradesh Building Rules, 2017. Apart from that, a similar schemes are taken up by the Central Government, which is familiar in the Country known as “Pradhan Mantri Awas Yojana” (Housing for all Mission) and laid down certain guidelines in January, 2021.

According to Guideline No.2.3, the minimum size of houses constructed under the Mission under each component should conform to the standards provided in National Building Code (NBC). If available area of land, however, does not permit building of such minimum size of houses as per NBC and if beneficiary consent is available for reduced size of house, a suitable decision on area may be taken by States/UTs with the approval of SLSMC. All houses built or expanded under the Mission should essentially have toilet facility.

The size of house must be in accordance with National Building Code (NBC). It is relevant to mention size of plots prescribed in National Building Code (NBC) of India, 2016. Clause 6.6 of National Building Code of India, 2016 deals with size of plots. Rule 6.6.1 deals with ‘residential houses’, which is relevant for the purpose of deciding the present issue. Rule 6.6.1 is reads as follows:

6.6 Size of Plots.

6.6.1 Residential:

Each plot shall have a minimum size/frontage corresponding to the type of development as given below:

Sl.No.	Type of Development	Plot Size m^2	Frontage m
(1)	(2)	(3)	(4)
(i)	Detached building	Above 250	Above 12

(ii)	Semi-detached building	125-250	8 to 12
(iii)	Row type building	50-125	4.5 to 8

The minimum size of the site for group housing development shall be as given in the Master Plan and local development control rules. Open Spaces (within a plot) is dealt with by clause 8 of National Building Code.

Clause 8.1 is general provision. According to it, every room intended for human habitation shall abut on an interior or exterior open space or an open Verandah open to such interior or exterior open space.

Clause 8.1.1. - The open spaces inside and around a building have essentially to cater for the lighting and ventilation requirements of the rooms abutting such open spaces, and in the case of buildings abutting on streets in the front, rear or sides, the open spaces provided shall be sufficient for the future widening of such streets.

The open spaces shall be separate or distinct for each building and where a building has two or more wings, each wing shall have separate or distinct open spaces for the purposes of lighting and ventilation of the wings. However, separation between accessory and main buildings more than 7 m in height shall not be less than 1.5 m; for buildings up to 7 m in height no such separation shall be required. (Vide: clause 8.1.2).

If the guidelines laid down in National Building Code, 2016 are applied to the house proposed to be constructed in the site allotted to the beneficiaries under "***Navaratnalu – Pedalandariki Illu***", it is highly difficult for anyone to raise construction in the

limited area of 48.4 square yards in municipalities.

Chapter – 4 of Model Building Bye-laws deals with General Building Requirements. Table 4.1 specified occupant load. According to it, occupant load per 100 square meters of plinth or covered area is '8' persons. Minimum size and width of different components of residential premises is specified in Table 4.2., wherein minimum requirement for plots upto 50 square meters and minimum requirement for plots above 50 square meters is prescribed, which is extracted hereunder for better appreciation:

Sl. No.	**Component of Building**	**Min. requirement for plots upto 50 sq m.**	**Min. requirement for plots above 50 sq m.**
1	Habitable Room	Area 7.50 sq m. Width 2.10 m. Height 2.75 m.	Area 9.50 sq m. Width 2.40 m. Height 2.75 m.
2	Kitchen	Area 3.30 sq m. Width 1.50 m. Height 2.75 m.	Area 4.50 sq m. Width 1.50 m. Height 2.75 m.
3	Pantry	Area Not applicable Width Not applicable Height Not applicable	Area 3.00 sq m. Width 1.40 m. Height 2.75 m.
4	Bathroom	Area 1.20 sq m. Width 1.00 m. Height 2.20 m.	Area 1.80 sq m. Width 1.20 m. Height 2.20 m.
5	W.C.	Area 1.00 sq m. Width 0.90 m. Height 2.20 m.	Area 1.10 sq m. Height 0.90 m. Height 2.20 m.
6	Combined Bath & W.C. (Toilet)	Area 1.80 sq m. Width 1.00 m. Height 2.20 m.	Area 2.80 sq m. Width 1.20 m. Height 2.20 m.
7	Store	Area No restriction Width No restriction Height 2.20 m.	Area No restriction Width No restriction Height 2.2 m.
8	Projections	Permitted within the setbacks upto 0.75 m. width	Permitted within the setbacks upto 0.75 m. width
9	Canopy	See clause 4.9.6	See clause 4.9.6

Clause 4.3 of Chapter – 4 of Model Building Bye-laws deals with 'group housing' and specified certain guidelines for construction of residential group housing. If these, Model Building Bye-laws are applied for construction of houses in the plot of Ac.0.01 cent in Municipal areas or Ac.0.01 ½ cent in Gram

Panchayat areas, it is highly difficult for anyone to construct a building strictly adhering to the guidelines.

Therefore, plot size is to be changed appropriately keeping in view the Andhra Pradesh Building Rules, 2017, National Building Code (NBC) of India, 2016 and Model Building Bye-laws issued by the Ministry of Housing and Urban Affairs, by the State.

If building is constructed in Ac.0.01 cent in Municipal area and Ac.0.01 ½ cent in Gram Panchayat area in compliance of various guidelines referred above, the impact on the environment has to be considered. Rule 54 of the Andhra Pradesh Building Rules, 2017 deals with "restrictions of building activity". Clause (4) of Rule 54 deals with "Environmental Impact Assessment Notification-2006"

> "(4) Environmental Impact Assessment Notification-2006:
>
> As per the provisions laid under the EIA Notification S.O.1533, Dt.14.9.2006 and it's amendment dt.01.12.2009 issued by MOE&F, GOI and Notifications issued from time to time with reference to "Building / Construction Projects/Area Development Projects and Townships" complying with the following threshold limits fall under category B and are required to obtain prior Environmental Clearance (EC) from State Environmental Impact 104 Assessment Authority (SEIAA), Ministry of Environment and Forests, Government of India."

But, in the present case, it is not known whether any environmental clearance was obtained as mandatead under clause (4) of Rule 54 of the Andhra Pradesh Building Rules, 2017. Therefore, environmental impact assessment shall be made by the competent authority while accepting such group housing or cluster housing under the scheme "***Navaratnalu – Pedalandariki Illu***". If it is not complied, it is violation of the Andhra Pradesh Building Rules, 2017.

In Re: Right to privacy:

As the limited site is allotted to the eligible women household, right of privacy shall be taken into consideration since the house is meant for living with family to lead matrimonial life. The Apex Court declared right to privacy as a fundamental right in "***Justice K.S. Puttaswamy v. Union of India (UOI)***[76]" and "***Bibhuti Bhusan Chakraborty v. Deputy Registrar***" (referred supra).

In view of the law laid down by the Supreme Court, it is the duty of the State to protect the privacy to lead marital life by a couple in a small house with grownup children and elders in the family. Hardly, there will not be any space to move freely in the house either to the children or to the elder people, who required some assistance at the old age.

In Re: Right of Child and adequate housing:

Apart from stay, provision for study to the children in the house likely to be constructed by the allottees for their psychological, mental and spiritual development as it is a fundamental right guaranteed under Article 21 of the Constitution of India. The Apex Court in "***Chameli Singh v. State of Uttar Pradesh***" (referred supra) dealt with such requirement.

In "***Shantistar Builders v. Narayan Khimalal Totame***[77]" the Supreme Court of India also recognized the right of children to adequate housing and observed that:

> Basic needs of man have traditionally been accepted to be three – food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is

[76] AIR2017SC4161
[77] (1990) 1 SCC 520

> the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect – physical, mental and intellectual. The Constitution aims at ensuring the full development of every child. That would be possible only if the child is in a proper home.
>
> [emphasis added].

International covenants to protect children's right to housing:

International human rights treaties, declarations and resolutions that specifically guarantee and protect children's right to housing, among others, include:

- Convention on the Rights of the Child: Article 16 (1), 16(2), Article 27
- Declaration of the Rights of the Child 1959
- Resolution 1994/8, Children and the Right to Adequate Housing, 1994
- Commission on Human Rights resolution 1994/93, The plight of street children, 1993
- General Assembly resolution 50/153, The rights of the child, 1995
- General Assembly resolution 54/ 148, The girl child, 2000
- General Comment No. 5: General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), Committee on the Rights of the Child, 2003
- General Comment No. 17: Article 24 (Rights of the child), Human Rights Committee, 1989
- World Declaration on the Survival, Protection and Development of Children, 1990, World Summit for Children, 1990

In view of the principle laid down by the Apex Court in "***Shantistar Builders v. Narayan Khimalal Totame***" (referred supra), child must be grown in an appropriate home, otherwise it amounts to violation of Human rights guaranteed under various covenants (referred supra) for their upliftment.

In the present case, no such aspect appears to have considered by the State and allotment of minimum size of plot of Ac.0.01 cent equivalent to 48.4 square yards is not for the upliftment of children to be grown up in an appropriate home. Moreover, the obligation of the State is to provide reasonable shelter to the houseless poor keeping in view their future, psychological, spiritual, economical, educational and emotional development.

Instead of providing such environment to the houseless poor living below the poverty line, the State undermined/tombed their future once for all since there is no possibility of their development and growth in various aspects referred above. Moreover, the chances of their growth and development in various aspects (referred supra) are bleak on account of their restricted moments and stay in a compact house constructed in a small strip of site.

In Re: Housing and Health:

Yet, another aspect to be considered by this Court is the impact on health of the public due to living in compact house without proper ventilation etc., since health is also a facet of Article 21 of Constitution of India besides Human Rights guaranteed under Article 25 of the Universal Declaration of Human Rights (referred supra) and Article 11 of the International Covenant on Economic, Social and Cultural Rights.

When the Government allotted house site of Ac.0.01 cent to the people living below the poverty line with an avowed object to provide shelter to them, the State must take into consideration health hazards, drinking water, drainage facility and fire safety measures to be provided on account of cluster housing and density of population in those areas. If no such amenities are provided, the clusters will turn into urban and rural slums. The World Health Organisation (WHO) keeping in view the impact on the health on account of inadequate housing issued certain guidelines in 2018 with reference to housing and health highlighting key health risks.

The WHO Housing and health guidelines (HHGL) provide evidence-based recommendations for healthy housing conditions and interventions. Healthy housing is shelter that supports a state of

complete physical, mental and social well-being. Healthy housing provides a feeling of home, including a sense of belonging, security and privacy. Healthy housing also refers to the physical structure of the dwelling, and the extent to which it enables physical health, including by being structurally sound, by providing shelter from the elements and from excess moisture, and by facilitating comfortable temperatures, adequate sanitation and illumination, sufficient space, safe fuel or connection to electricity, and protection from pollutants, injury hazards, mould and pests. Whether housing is healthy also depends on factors outside its walls. It depends on the local community, which enables social interactions that support health and well-being. Finally, healthy housing relies on the immediate housing environment, and the extent to which this provides access to services, green space, and active and public transport options, as well as protection from waste, pollution and the effects of disaster, whether natural or man-made.

Exposures and health risks in the home environment are critically important because of the large amount of time people spend there. In high-income countries, around 70% of people's time is spent inside their home. In some places, including where unemployment levels are higher, and where more people are employed in home-based industries, this percentage is even higher. Children, the elderly, and those with a disability or chronic illness are likely to spend most of their time at home, and are therefore more exposed to health risks associated with housing. Children are also at increased risk of the harms from some of the toxins that are present in some housing, such as those in lead paint.

Housing will become increasingly important to health due to demographic and climate changes. The number of people aged over 60 years of age, who spend a larger proportion of their time at home, will double by 2050. The changing weather patterns associated with climate change also underline the importance of housing providing protection from cold, heat and extreme weather events.

Poor housing can expose people to several health risks. For example, structurally deficient housing, due to poor construction or maintenance, can increase the likelihood that people slip or fall, increasing the risk of injury. Poor accessibility to homes may expose their disabled and elderly residents to the risk of injury, stress and isolation. Housing that is insecure, sometimes due to affordability issues or weak security of tenure, is stressful. Housing that is difficult or expensive to heat can contribute to poor respiratory and cardiovascular outcomes, while high indoor temperatures can increase cardiovascular mortality. Indoor air pollution harms respiratory health and may trigger allergic and irritant reactions, such as asthma. Crowded housing increases the risk of exposure to infectious disease and stress. Inadequate water supply and sanitation facilities affect food safety and personal hygiene. Urban design that discourages physical activity contributes to obesity and related conditions, such as diabetes, and poor mental and cardiovascular health. Unsafe building materials or building practices, or building homes in unsafe locations, can expose people to a range of risks, such as injury due to building collapse.

Housing in slums and informal housing pose particular risks to health. Currently, around 1 billion people live in slum conditions today, which often develop due to exclusion from planning processes.

According to UN-Habitat, a “slum household” is a group of individuals under the same roof, in an urban area, lacking one or more of the following: durable housing (housing which fails to provide shelter from the elements); sufficient living space; security of tenure; sanitation and infrastructure; and access to improved (uncontaminated) water sources. Slum dwellers are therefore exposed to many of the risks associated with housing, such as structurally defective dwellings, inadequate housing facilities and overcrowding, but also face particular health risks from poor sanitation and unsafe electric connections, toxic building materials, unvented cooking facilities, and unsafe infrastructure, including roads. In addition, such settlements are sometimes in locations that are more likely to expose occupants to hazards such as landslides, floods and industrial pollution. In relation to well-being, the lack of legal title to homes is stressful and can expose slum dwellers to the risk of forced eviction.

Slums and informal settlements often house migrants, refugees and internally displaced persons. More people are on the move now than ever before.

Large numbers of people live in poor housing conditions. While everyone can be exposed to the risks associated with unhealthy housing, people with low incomes and vulnerable groups are more likely to live in unsuitable or insecure housing, or to be denied housing altogether.

The State is bound to follow the guidelines issued by World Health Organisation while providing house sites to houseless poor for construction of houses. But the State did not take into consideration

the guidelines issued by World Health Organisation while allotting minimum site of Ac.0.01 cent in Municipal areas and Ac.0.01 ½ cent in Gram Panchayat for construction of houses by houseless poor.

Keeping in view of the above aspects, allotment of Ac.0.01 cent site for residential purpose by the State in Municipal Area and Ac.0.01 ½ cent in Gram Panchayat areas is inadequate for housing and on account of cluster housing and group housing, the environment impact and health hazards, fire safety, adequacy of drinking water and facilities to drain out sullage water is to be examined by the State before insisting the allottees to construct house in the site allotted to them. No such study was taken up by the State till date.

In view of my foregoing discussion and findings recorded thereon, the specific findings are summed up, as follows:

(1) If the Court finds that the policy decisions of the State are violative of any fundamental right guaranteed under the Constitution of India or Human rights, the Court is bound to interfere with such policy decisions.

(2) Guideline No.3 of G.O.Ms.No.367 dated 19.08.2019, clause (x) (xi) and (xii) of G.O.Ms.No.488 dated 02.12.2019 and clause (b) and clause (d) of G.O.Ms.No.99 dated 31.03.2020 are declared as illegal, arbitrary as the clauses are inconsistent with one another, and liable to be set aside.

(3) Guideline No.2 of G.O.Ms.No.367 dated 19.08.2019 is unconstitutional, illegal, arbitrary and violative of

Articles 14, 15 (1) of the Constitution of India and defeating the object of Article 39 of the Constitution of India besides violative of Articles 7 and 17 of the Universal Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights, and liable to be set aside.

(4) Allotment of Ac.0.01 cent site for residential purpose by the State in Municipal Area and Ac.0.01 ½ cent in Gram Panchayat areas is inadequate for housing and on account of cluster housing and group housing, the environment impact on health hazards, fire safety, adequacy of drinking water and facilities to drain out sullage water is to be examined by the State before insisting the allottees to construct house in the site allotted to them. No such study was taken up by the State till date.

(5) It is made clear that this Court is not against allotment of house site to women household, but it amounts to discrimination. Therefore, I feel that it is appropriate to direct the respondents to consider the eligibility of men and transsexual for allotment of house site under the scheme "***Navaratnalu – Pedalandariki Illu***". At the same time, as discussed in the earlier paragraphs with regard to effect of health, physical, mental, spiritual, educational and economic development with reference to Human Rights guaranteed under Article 21 of the Constitution of India, it is appropriate to examine the

issue by committee of experts to increase the extent of land allotted and to be allotted based on the report submitted by such expert committee.

In the result, the writ petition is allowed in part while declaring

(a) Guideline No.3 of G.O.Ms.No.367 dated 19.08.2019, clause (x) (xi) and (xii) of G.O.Ms.No.488 dated 02.12.2019 and clause (b) and clause (d) of G.O.Ms.No.99 dated 31.03.2020 as illegal, arbitrary and they are hereby quashed, consequently, respondents are directed to cancel the deed of conveyance registered in favour of allottees following the procedure laid down in law while directing to issue D-Form patta in favour of allottees, strictly in terms of clause 3 of G.O.Ms.No.367 dated 19.08.2019 after considering the recommendations of expert committee vide clause (c).

(b) Guideline No.2 of G.O.Ms.No.367 dated 19.08.2019 as illegal, arbitrary and violative of Articles 14, 15 (1) of the Constitution of India and defeating the object of scheme and Article 39 of the Constitution of India besides violative of Articles 7 and 17 of the Universal Declaration of Human Rights and Article 26 of International Covenant on Civil and Political Rights, and they are hereby quashed, consequently, the State is directed to allot house site to men and transsexual also on par with women, subject to their eligibility.

(c) Further, the State is directed to appoint a special committee consisting of expert from Central Pollution Control Board; expert from Ministry of Housing and Urban

Affairs; Health expert from Ministry of Health and Family Welfare to examine the issues discussed in the earlier paragraphs, within one (1) month from the date of receipt of copy of this Order to submit a report within one (1) month thereafter and publish the report in two local newspapers inviting objections from the public and finalise the scheme "***Navaratnalu – Pedalandariki Illu***" for construction of houses in the house sites keeping in view the impact on environment, health hazards etc. and ***increase/enhance the area, if necessary by acquiring more site***, allotted to the beneficiaries modifying the layouts keeping in view the report to be submitted by the Special Committee. Till completion of such exercise, constructions shall not be proceeded in the land allotted to beneficiaries under the scheme "***Navaratnalu – Pedalandariki Illu***". No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

08.10.2021

Note: L.R. copy to be marked.

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