Government Of Telangana vs Rao V.B.J.Chelikani on 25 November, 2024

Author: Dipankar Datta

Bench: Dipankar Datta

2024 INSC 894

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3791-3793 OF 2011

STATE OF ANDHRA PRADESH AND OTHERS ....

VERSUS

DR. RAO, V.B.J. CHELIKANI AND OTHERS ....

WITH

CIVIL APPEAL NOS. 3794-3796 OF 2011

CIVIL APPEAL NOS. 3797-3799 OF 2011

CIVIL APPEAL NOS. 3800-3802 OF 2011

CIVIL APPEAL NO. 3803 OF 2011

CIVIL APPEAL NOS. 3804-3806 OF 2011

CIVIL APPEAL NOS 3807-3809 OF 2011

CIVIL APPEAL NO. 3810 OF 2011

CIVIL APPEAL NO. OF 2024
(ARISING OUT OF SPECIAL LEAVE PETITION (CIVIL) NO. 19838

AND

CONTEMPT PETITION (CIVIL) NOS. 1122-1124 OF 20
IN
CIVIL APPEAL NOS. 3797-3799 OF 2011

JUDGMENT

SANJIV KHANNA, CJI.

Leave granted in Special Leave Petition (Civil) No. 19838 of 2010.

2. This common judgment decides the cross appeals which impugn the judgment dated 05.01.2010, of the Division Bench of the High Court of Andhra Pradesh in Writ Petition Nos. 7956, 7997, and 23682 of 2008. These Writ Petitions challenged the allotment of land parcels, vide several State Government Memoranda1, within the Greater Hyderabad Municipal Corporation limits. The land was allocated to Cooperative Societies composed of members of various groups, including Members of Parliament2, Members of both houses of the State Legislature3, officers of All India Services4, Judges of the Supreme Court and High Court5, State Government employees, defence personnel, journalists and individuals from weaker sections of society.

3. The High Court, in the impugned judgment, has partly allowed the Writ Petitions, quashing the GoMs that laid down the allotment policy and facilitate the allotments to the Cooperative Societies. It held that the parcels of land allotted to the respondents were to be restored to the Government, and that fresh allotments can only be made following the issuance of appropriate GoMs consistent with the judgment. The High Court further directed that before such GoMs are issued, the State shall call for details of members who meet the eligibility criteria; ensure they sign affidavits declaring their eligibility; and publish this information on its website for public access. Any false declaration will result in cancellation of the allotment, and initiation of civil and criminal proceedings.

1 For short, “GoM”.

2 For short, “MP”.

3 For short, “MLA”.

4 For short, “AIS”.

5 We note that while the Judges of the Supreme Court and High Court have withdrawn their claims and are not seeking allotment, we have addressed their category for the purpose of tackling the legal issue arising out of allotment made under GoM No. 243.

4. While the Cooperative Societies, their members, and the State of Telangana 6 have preferred appeals contesting these directions, Mr. Keshav Rao Jadhav, the petitioner in Writ Petition No. 23682/2008, has filed a cross-appeal. Mr. Keshav Rao Jadhav prays that preferential allotment of land – particularly at basic rates – to MLAs, MPs, journalists, officers of the AIS and Judges, is illegal, arbitrary and unconstitutional, as it violates the right to equality guaranteed under Article 14 of the Constitution of India. FACTS OF THE CASE

5. On 28.02.2005, the Government of Andhra Pradesh issued three GoMs – Nos.

242, 243 and 244. GoM No. 242 established a comprehensive policy for managing land resources and housing in urban and semi-urban areas. GoM No. 243 outlined categories of individuals eligible for land allotment, while GoM No. 244 provided guidelines for this process.

6. GoM No. 242 emphasized the urgent need for prudent management of land resources in urban and semi-urban areas due to rising urbanization and increasing demand for housing. Due to growing urbanisation, demand for land for housing purposes has surged. It highlighted the challenges faced by the working middle class, as private developers often artificially inflate land prices, making it difficult for them to secure plots. Recognizing that providing shelter is a top priority for the State, the Government had previously formulated a housing scheme for the poor. However, there was no fixed policy catering to "other deserving sections" of the society. Consequently, the Government 6 Refer to the order dated 30.03.2016 passed by this Court, giving directions for amendment in the Cause Title.

decided that a comprehensive policy was necessary, leading to the issuance of GoM No. 242. Key stipulations of the GoM include:

> • Creation of a land bank, source-pooled for allotment to various housing Cooperative Societies and other target groups. • The source of the land bank would consist of land located in and around 120 municipalities with clear titles.

• The land would be within a radius of 25 kilometres for Category "A" municipalities, 15 kilometres for Category "B" municipalities and 10 kilometres for Category "C" municipalities.

• Government land available with various departments which was not being used for specified categories such as Horticulture, Agriculture, Roads and Buildings amongst other categories, was also to be subsumed and put in the land bank.

• Surplus ceiling land, endowment lands and private lands that had been acquired were to also form a part of the land pool.

• Revenue department was responsible for collecting details of large chunks of available land which would fall in the said categories. • The Collector and District Magistrate was nominated as the Competent Authority for transfer of the government land to the land bank in consultation with concerned government departments. • The Collector and District Magistrate would also be competent to acquire private land for public purposes, after examining the demand and after consulting the agencies in-charge of the land bank. • Each category of land was to be treated as a distinct entity till the same was alienated to the applicant. The objective was to plough back the cost of land acquisition.

• The Empowered Committee chaired by the Chief Commissioner of Land Administration and comprising five members was vested with the power to decide allotment of the land, its apportionment and its use, based upon the hierarchy of needs, and submit proposals to the Government. • The designated officers who would be the members of the Empowered Committee,

while recommending allotment of land in favour of the Cooperative Societies, would also recommend the price to be fixed for the land proposed for allotment.

• The recommended price was to be fixed after taking into account the acquisition cost of land, activity of the beneficiary institution and demand for the land.

• Separate orders were to be issued on the methodology to be adopted for selecting the housing society/institution for allotment of land from the land bank; deciding conditions of allotment; and ownership rights.

7. On 28.02.2005, GoM No. 243 was also issued. It stated that land from the land bank could be allotted for housing and institutional purposes. For housing, the Government encouraged allocation of land for independent housing sites in areas where such housing schemes were prevalent, and for the construction of flats in regions where flats were established. The key stipulations of the GoM are outlined below:

> • The Government might alienate lands, preferably for construction of flats in view of land scarcity, in the Municipal Corporation of Hyderabad, Warangal, Vijayawada, Guntur, Rajahmundry, Visakhapatnam, Kurnool and Nellore.
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> • Land was not to be allotted to individual beneficiaries, but to groups or Cooperative Societies of which the beneficiaries would be members. • A Cooperative Society or group was to have a minimum of 12 eligible members.
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> • The applications for allotment of flat/housing site were to be made to the Collector and District Magistrate, who in turn had to obtain necessary approval for land allotment from the Empowered Committee and the Government.
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> • The Collector was to be nominated as the Nodal Authority and was tasked with the duty to make the Scheme operational. • For allotment of the land to institutions, the Collector was to submit the proposal to the Empowered Committee.
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> • The allotment for the Cooperative Societies comprising Judges, MPs, MLAs, officers of the AIS, officers of the Andhra Pradesh cadre, officers of other State cadres who were natives of Andhra Pradesh and who had worked on deputation with the Andhra Pradesh Government, officers of the Government of Andhra Pradesh, and journalists, would be in satellite towns of Hyderabad and Ranga Reddy districts. • The lands located in prime locations would only be allotted to government organisations for public purposes or for institutional use. • Government lands located in the proposed Outer Ring Road would not be allotted for housing sites for group of individuals or Cooperative Housing Societies.
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> • The Cooperative Society or group concerned which would be allotted land by the Government, shall further allot individual housing sites/flats to its individual

members.

• Land would be allotted without any development, which had to be undertaken by the Cooperative Society or group. • Time limit fixed for the completion of development of land and infrastructure facilities (road, water supply, electricity etc.) was one year from the date of alienation of land, failing which the land would be repossessed by the government.

• Cost and categorisation of sections of the society was prescribed in the following manner:

"CATEGORISATION FOR PRICING:

i) MLAs, MPs, Judges of Supreme Court and High Court, All India Services Officers.

ii) Accredited Journalists from recognized and registered newspapers.

iii) State Government Employees and Panchayat Raj Teachers working in the State of Andhra Pradesh.

iv) Recognised National and International Sports persons and eminent persons in the field of Culture and Arts.

v) Defence Employees, Central Government employees and employees of PSUs.

vi) Widows of Kargil and other war heroes and extremist violence who are hailing from Andhra Pradesh.

vii) Weaker Sections.

viii) Institutions - Educational/Charitable/Religious etc., The land shall be allotted to the categories figuring at Sl. No. i to iv at the basic value of the land; for category v and viii at prevailing market value; for category vi on free of cost and for category vii as per the policy of the Government in vogue. The acquired land shall be alienated on cost basis, which means that the actual cost paid to the landowners shall be fixed as cost of land." • The following conditions of allotment were laid down:

o The Cooperative Society/group would ensure that its members were seeking allotment of land for the first time.

o All the members were to file an affidavit stating that they had not received benefit of concessional allotment from the government earlier, nor were they a member of any Cooperative Society/group to which concessional allotment had been made earlier. o The members would also give an undertaking that they would not avail of

such facility in the future.

o Allotment process had to be completed within six months from the date of alienation of land.

o The allottee/beneficiary would have to complete the development within a period of two years from the date of allotment by the Cooperative Society/group.

o The beneficiary/allottee would not have any right to sell the property allotted for a period of 15 years.

o The Cooperative Societies/groups were restricted from allotting open spaces in the layout or making changes in the layout without approval of the Competent Authority.

o In satellite townships being developed by the urban development agencies in Hyderabad and Ranga Reddy districts, certain categories of persons, such as Class IV Employees, NGOs etc., who may not be in a position make an investment for buying a plot, would be considered for allotment of housing sites at an appropriate rate.

o However, the conditions for allotment in respect of government employees would be issued separately.

• The Supreme Court and High Court Judges, MLAs, MPs, and officers of AIS would be allotted plots of 500 square yards. • Government employees would be allotted plots of 100-400 square yards.

• Journalists would be allotted plots of 300 square yards. • The Cooperative Society/group would decide whether they would like to build the houses themselves or would like to avail assistance of Andhra Pradesh Housing Board.

8. On 28.02.2005, GoM No. 244 was also issued, whose key stipulations read:

• The Collector would be the Nodal Authority to make the scheme operational and would be competent to allot the land to the Cooperative Society or the group.

• The Collector would monitor implementation of the scheme very closely and send a monthly progress report to the Government. • The Government would alienate land to the Cooperative Society or the group, which would in turn convey the title of the plot/flat to the members through a registered sale deed.

• Following conditions of allotment were laid down:

o The employee must be a member of the Cooperative Society or the group.

o To facilitate the Cooperative Society to arrive at an estimation of the land required, they were advised to complete the admission of its members before making an application to the authorities. o Where some employees did not form part of an existing society, they could form a separate Cooperative Society/group and make a request for allotment.

o The Cooperative Societies/groups would not allot housing sites/flats to any other member whose name did not figure in the application submitted to the Competent Authority.

o The employee would have to be an approved probationer in service of the Government or local body, who has completed a minimum of five years in service.

o Only one housing site/flat would be allotted to a particular government servant.

o If both the husband and wife were in government service, they would be eligible for allotment of only one housing site/flat. o The allotment of the housing site/flat was to be completed within six months from the date of alienation of the land. o The allotment of house site/flat would be done by draw of lots. o The Cooperative Societies/group would complete construction on the allotted land within two years from the date of allotment. o Construction would be done directly or through the Housing Board or through any other agency as mutually agreed upon by the members.

o The employee who was once allotted a housing site/flat would not be permitted to sell the same for a period of 15 years. o The society would not allot open spaces indicated in the layout or change the layout without the approval of the Competent Authority. o The allotment of housing site/flat would be recorded in the service book of the employee.

o The employee would be entitled for concessional allotment of land only once during the period of service.

o Members of the Cooperative Society would have to file an affidavit stating that they had not received the benefit of concessional allotment earlier, nor were they a member of a society to which concessional allotment of land had been made earlier. o All members would have to furnish an undertaking stating that they would not avail of such facilities in the future. o Indian Administrative Service,7 Indian Police Service,8 and Indian Foreign Service9 officers belonging to Andhra Pradesh cadre would be entitled to a plot size of 500 square yards.

o Non-cadre Head of Departments, Fourth Level Gazetted Officers and above were entitled to a plot size of 400 square yards. o Second and Third Level Gazetted Officers were entitled to a plot size of 300 square yards.

o First Level Gazetted Officers were entitled to a plot size of 250 square yards.

o Superintendents, Assistant Section Officers, Senior Assistants, Telephone Operators, LD Stenos, TCAs, Junior Assistants, etc. and persons holding equivalent posts were entitled to a plot size of 175 square yards.

7 For short, “IAS”.

8 For short, “IPS”.

9 For short, “IFS”.

o Attenders, Record Assistants, drivers, etc., and persons holding equivalent posts were entitled to plot size of 100 square yards. o In case sufficient land was not available, Category 1 officers, namely, those belonging to IAS, IPS and IFS were to retain the mentioned plot size of 500 square yards, but there would be a reduction of plot size in terms of ratio of 4 : 3 : 2.5 : 1.75 : 1 for Categories 2 to 5.

9. Thereafter, on 04.05.2006, the Government of Andhra Pradesh issued GoM No. 522. The GoM stated that based upon representations from various individuals or groups i.e., Judges of the High Court, MLAs, MPs, officers of the AIS, people of eminence and journalists, the Collector of Ranga Reddy District had proposed allotment of government land for housing purpose on payment of basic value through the Chief Commissioner of Land Administration, Hyderabad. The Government, after careful examination of the proposal, had directed allotment of government land to the extent of 245 acres in villages of Ranga Reddy District in favour of Judges of the High Court, MLAs, MPs, serving left over officers of pre-1989 AIS batches, AIS officers serving since 1989, serving AIS officers of other cadre with Andhra Pradesh nativity, people of eminence and working journalists, as a one-time benefit as per their eligibility. The allotment was made in relaxation of the order issued in GoM No. 243 dated 28.02.2005, subject to the guidelines and filing of affidavit proforma 1 and 2 appended to the order. The stipulations of the GoM were:-

• 72 acres of land was to be allotted in Survey No. 276 of Puppalaguda Village, Rajendranagar Mandal to the MLAs and MPs. • 38 acres of land was to be allotted in Survey No. 149 of Nanakramguda Village, Rajendranagar Mandal in favour of Judges, people of eminence, and serving left over officers of pre-1989 AIS batches. • 32 acres of land was to be allotted in Survey No. 454/1 of Puppalaguda Village, Rajendranagar Mandal in favour of serving post-1989 AIS officers and serving AIS officers of other cadre with Andhra Pradesh nativity who are working or had worked on deputation in Andhra Pradesh. • 33 acres of land was to be allotted in Survey No. 132 of Vattinagulapalli Village to AIS officers serving post 1989, in the order of seniority. • 32 acres of land was to be allotted in Survey No. 332 of Nizampet Village and 38 acres of land was to be allotted in Survey No. 35/2 of Pet Basheerabad Village to media persons.

• Judges of the High Court, MPs, MLAs, serving AIS officers and persons of eminence were to be allotted plots of 500 square yards. • Former members of the Legislative Assembly, their widows and working journalists were to be allotted plots of 300 square yards. • The land was to be allotted to Hyderabad Urban Development Authority,10 which in turn would develop layouts in the five blocks at the respective locations for allotment of housing sites to individuals. • Advance possession of the land would be given to HUDA. • HUDA will commence work from its own reserves. Each allottee would reimburse the said amount to HUDA as per the time schedule fixed. • Format of the townships was to be based on the gated community concept.

10 For short, "HUDA".

• Appendix to the GoM stated that the allotment to the members of Legislature, Judiciary, Executive and the press was a one-time beneficial measure, irrespective of any other private ownership of land, to ensure equity and to avoid discrimination.

• The appendix laid down the details including approximate number of housing sites etc. with stipulation regarding the size of the plots which would be allotted.

• The general conditions of eligibility read:

o Members of the categories listed at serial no. 3 to 6 under item 1, i.e. Judges of the High Court of Andhra Pradesh, AIS officers, persons of eminence and journalists, should not have availed any benefit of allotment of land in the cities of Hyderabad, Secunderabad, and Ranga Reddy district or any other district. o All the sitting MLAs and MPs were to be given a plot, provided they did not have a house or housing site in Hyderabad or Secunderabad.

o All eligible persons who were being allotted the land would have to file an affidavit agreeing to the conditions and stipulations. o No person who was allotted a plot shall alienate or transfer it using the instrument of General Power of Attorney11 within a period of 10 years from the date of allotment.

• Committees and sub-committees were formed to process allotment applications.

11 For short, "GPA".

• Government would allot land to HUDA at the basic rate, and as already noted above, HUDA would develop layouts in the five blocks at the respective locations.

• The allottees were to pay the actual cost of the plot, i.e., the basic value plus cost of development, as worked out by HUDA, in three equal instalments, within six months from the date of allotment. • The plot will not be handed over and registered till full payment is made by the allottee to HUDA.

• In case of default, the Screening Committee could recommend the Government to delete such names from the list.

• Construction of houses was to commence within a period of two years from the date of handing over the plot to the individual allottee.

10. GoM No. 522 dated 04.05.2006, was challenged by Mr. V.S. Bose, Dr. Rao V.B.J. Chelikani and Mr. O.M. Debara in the High Court in Writ Petition No. 13730 of 2006. It was submitted that:

> • Land worth Rs. 700 crores was sought to be allotted to the specified categories at a throw-away price compared to the market value. • The government, as a trustee of the public land, cannot dispose of land except by way of a policy which was consistent with Articles 14, 38 and 39(d) of the Constitution of India.
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> • Majority of the beneficiaries were affluent persons with good social standing.
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> • Land prices have escalated substantially and hence, land allotment at basic value without auction was detrimental to public interest. • There was no rational basis or object which was sought to be achieved through such a land allotment policy.
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> • Lastly, there was no justification for allotting the land to preferred individuals at a fraction of the market value.
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> • GoM No. 243 had completely prohibited allotment of land to individuals who had already received benefit of concessional allotment from the Government. This requirement was deleted/removed through GoM No.
>
> 522. The policy also permitted allotment of land to those who own or possess land in their own name or in the name of their spouse or children. Reference was made to the amendment made vide GoM No. 1424 dated 28.09.2006.

11. The Writ Petition was allowed by judgment dated 08.10.2007. At the outset, we must notice that the judgment of the Division Bench specifically recorded that the petitioners therein had not questioned the vires of GoM Nos. 242, 243 and 244, which established the policy, categories, and guidelines for land allocation. Therefore, the validity of these GoMs was not examined. The focus of the Writ Petition concerning GoM No. 522 was the relaxation of conditions which had been prescribed in the earlier GoMs.

12. The High Court referred to Rules 3 and 10 of the Andhra Pradesh (Telangana Area) Alienation of State Lands & Land Revenue Rules, 1975,12 which pertain to the alienation of land to local authorities. The Court recorded that according to the 1975 Rules, land acquired by the State could be alienated to a local body/authority for unremunerative public purposes without charging a price. 12 For short, “1975 Rules”.

However, when the land was to be allocated for remunerative public purposes or to private entities, it could only be done at market value. Rule 10 allows the Government to deviate from the established procedures. However, any such deviation must follow a reasonable process for land alienation, including auction, where such alienation/sale is deemed necessary.

13. The Court noted that a reading of GoM No. 522 made it clear that it relaxed the conditions of GoM No. 243, with the intent of providing undue benefits to individuals who would not otherwise qualify for land allotment under GoM No.

243. The relaxation was made in favour of (i) Sitting and former MLAs, including widows of deceased MLAs; (ii) Sitting MPs from Andhra Pradesh in Lok Sabha and Rajya Sabha; (iii) Judges of the High Court of Andhra Pradesh;

(iv) AIS officers; (v) Persons of eminence and (vi) Journalists. There was no justification for allotting land to these categories of persons by relaxing conditions, to make them eligible for allotment of land even if they had a house in their name, or in the name of their spouse or children, or had earlier been allotted a plot of land at a concessional rate, provided they did not have any house in the cities of Hyderabad or Secunderabad. The Appendix to GoM No. 522, which lists the categories of beneficiaries entitled to the relaxation, only states that the allotment to such categories was done irrespective of their private possessions, in order to "ensure equity and avoid discrimination". The Court found no plausible reason for relaxing the restrictions outlined in GoM No. 243, stating that the revised policy under GoM No. 522 was contrary to public interest and it favoured certain individuals at the cost of the public exchequer. The State was unjustifiably giving the benefit of concessional land allotment to some affluent persons, who had no pressing need for housing sites, while depriving the persons who were genuinely in need of a housing plot. Further, the State was also losing out on a substantial amount of revenue that it could have generated by duly auctioning the Government land instead of allotting it at such low rates.

14. The Court held that the principle of equality had been undermined by the policy.

GoM No. 1424, dated 28.09.2006, was deemed consistent with GoM No. 243, with the stipulation that the restrictions outlined in GoM No. 243 would apply to land allotted by the Cooperative Society to its members. The High Court held that the Government would be well advised to impose additional restrictions against allotments to individuals who owned a house in their name or that of their spouse or children, and this recommendation should apply to the allotments made to Respondent No. 4 therein. The directive of the High Court did not preclude the Government from making allotments in accordance with the policy under GoM No. 243. It was also open for the identified category of individuals to form a new society and submit the necessary registration applications.

15. Following this judgment, the State of Andhra Pradesh issued six GoMs (Nos.

419 to 425), all dated 25.03.2008, although GoM No. 421 was later rescinded. GoM No. 419 states that, based on representations from the four wings— Legislature, Judiciary, Executive, and

Media—land allotments for housing sites had been made under GoM No. 522, albeit the same was subsequently struck down by the High Court on 08.10.2007. The Court had directed the Government that it would be well advised to incorporate additional restrictions for those who owned a house or housing site in their name or that of their spouse or children.

16. In issuing GoM No. 1424, which allocated land for Respondent No. 4 therein, the Government confirmed that all restrictions in GoM No. 243 would apply to those allotments. The Government decided to accept and implement the order of the High Court and to allot housing sites to members and societies according to GoM Nos. 242, 243, and 244. Consequently, 3.25 acres of government land in Puppalaguda Village, Rajendranagar Mandal, Ranga Reddy District, was earmarked for allotment to Uday Civil Services Cooperative Mutually Aided House Building Society, specifically for AIS officers with Andhra Pradesh nativity and those who had worked or were working in the State for at least three years.

17. The allotment was to be done at the basic value of land per acre as on 04.05.2006, for housing purposes. Conditions specified in GoM No. 419 included adherence to the policies outlined in GoM Nos. 242, 243, and 244. Members who had received any prior allotment at a concessional rate, either directly or through a society, would not be eligible. Members in service as on 29.04.2006, would qualify, and in cases where both spouses were employed, only one would be eligible. Development of the land would be carried out by the Cooperative Society or a designated agency, adhering to applicable zoning regulations. Each member was eligible for a plot of 500 square yards, and no allottee could transfer or dispose of the land via GPA for a period of ten years from the date of allotment. Allotments were to be made within six months of the alienation date. A member who was allotted a housing site was to complete the construction of the house within a period of two years. Affidavit would be furnished by every allottee on a non-judicial stamp paper in accordance with the prescribed format.

18. On similar terms and conditions, vide GoM No. 420, an allotment of 72 acres of land in Puppalaguda Village, Rajendranagar Mandal, Ranga Reddy district, was made to Indira Legislators Mutually Aided Cooperative Housing Society Limited on the basic value of land. It was further stipulated that MLAs and MPs who have previously been allotted a housing site on a concessional rate, either directly or as party of any society, would not be eligible for allotment.

19. GoM No. 422 provided for allotment of 48.15 acres of land in Puppalaguda Village, Rajendranagar Mandal, Ranga Reddy District to Adarshnagar Mutually Aided Cooperative Housing Society on payment of the basic value of land per acre as on 04.05.2006 on the same terms and conditions. Allotment of 16 acres of land at Nanakramguda Village, Serilingapalli Mandal, Ranga Reddy District, was made in favour of Koh-Ei-Noor Civil Services MACHSL, Hyderabad Officers of AIS pre-1989 service, vide GoM No. 423 on payment of the basic value of land per acre on 04.05.2006 on similar terms. GoM No. 424 was for allotment of 32 acres in village Nizampet and 38 acres in Pet Basheerabad village in Qutubullapur Mandal, Ranga Reddy District in favour of Jawaharlal Nehru Journalists Mutually Aided Cooperative Housing Society Limited on payment of the basic value of land per acre as existing on 04.05.2006. However, in this case, each member was eligible for 300 square yards of land. Other terms and conditions were the same. GoM No. 425

refers to three letters – two letters written by the Collector, Ranga Reddy District and one by the Chief Commissioner of Land Administration, Hyderabad, furnishing the Collector's proposal, which reported the requisition made by the Indian Revenue Service Officers Housing Society for allotment of 50 acres of Government land for housing purposes in Puppalaguda Village, Rajendranagar Mandal. The Government had carefully considered the proposal and had agreed to allot 30 acres of land in Gopannapalli Village, Serilingampally Mandal, Ranga Reddy District in favour of Indian Revenue Service13 Officers (Income Tax) Housing Society on payment of the basic value. The conditions relating to the basic value on allotment within Outer Ring Road project prescribed in GoM No. 243 were relaxed in favour of the Cooperative Society. The terms and conditions fixed as per the annexure stipulate that the IRS officers should be natives of Andhra Pradesh, working in Andhra Pradesh or any other part of the country. In case of non-Andhra IRS Officers, one should have worked a minimum of 5 years in Andhra Pradesh and should be serving in Andhra Pradesh as on 01.01.2008. If not a native of Andhra Pradesh, one should have declared any place in Andhra Pradesh as his hometown/place of settlement after retirement, through a formal declaration to Income Tax Department. Each eligible member was to be allotted 500 square yards. A member already allotted land by any other government was not eligible. An allottee was not entitled to alienate/transfer/dispose of the land using the instrument of GPA for a period of 10 years from the date of allotment. Through GoM No. 451 dated 27.03.2008, land was allotted to A.P. S.P. MACHS Ltd. to the extent of 21 acres, on somewhat identical terms.

20. After the said notification was issued, the three Writ Petitions mentioned in paragraph 1 above were filed. The lead Writ Petition No. 7956/2008 was filed by Dr. Rao V.B.J. Chelikani who was also a co-petitioner in the first Writ Petition No. 13730/2006. In addition, M/s Campaign for Housing and Tenural Rights (CHATRI) filed Writ Petition No. 7997/2008 and Mr. Keshav Rao Jadhav filed 13 For short, "IRS".

Writ Petition No. 23682/2008. It may be relevant to reproduce the prayers made in the Writ Petitions, which read:

> "Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring G.O.Ms. No.419 to 425 & 551 Revenue (ASN.V) Department dated 25.3.2008 & dated 27.3.2008 respectively issued by 1st respondent as illegal, arbitrary, unconstitutional, without jurisdiction, void ab initio and violative of petitioners fundamental rights guaranteed under article 14 orders dated 8.10.2007 in W.P.No.13730 passed by the Hon'ble High Court and consequently to set-aside the same and to pass such other order or orders.
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> xx xx xx Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or, direction more particularly one in the nature of writ of Mandamus declaring the

i) G.O.Ms. No.243, 28.2.2005 issued by the 1st respondent providing for the allotment of land to persons categorized in Sl.

Nos. i to V & Vii detailed therein.

ii) G.O.Ms. No.244 dated 28.2.2005 issued laying guidelines for allotment of land to Govt. of Employees and the methodology · therefor including the entitlement to varying extents of land and

iii) The consequential allotment. of lands to the respondents 4 dt.25.3.2008 and G.O.Ms. No.551 dt.27.3.2008 as arbitrary unreasonable opposed to public interest of violative of Article 14 of the Constitution of India being contrary to the Judgment of this Hon'ble Court in W.P.No.13730 of 2006 dt.8.10.2007 and also Rule 10(a) of the A.P. Telangana Area Revenue Rules and to set aside same and consequently direct the respondents to forthwith forbear from acting in pursuance of the impugned policy and pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.

xx xx xx Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the

iv) G.O.Ms. No.243, 28.2.2005 issued by the 181 respondent providing for the allotment of land to persons categorized in Sl.Nos. i to V & Vii detailed therein.

v) G.O.Ms. No.244 dated 28.2.2005 issued laying guidelines for allotment of land to Govt. of Employees and the methodology therefor including the entitlement to varying extents of land and,

vi) The consequential allotment of lands to the respondents 4 to 11 vide the impugned to G.O. Ms. No.419, 420, 421, 422, 423, 424, 425 dt.27th March, 2008 and all the consequential actions including the execution the execution of the sale deeds. as arbitrary, unreasonable, opposed to public interest, violative of Article 14 of the Constitution of India, being contrary to the Judgment of this Hon'ble Court in W.P. No.13730 of 2006 dt.8.10.2007 and the provisions of the A.P. Telangana Area Land Revenue Act, 1317 Fasli and the Rules made thereunder and set aside same and consequently direct the respondents to forthwith forbear from acting in pursuance of the impugned policy and pass such other or orders."

21. The housing Cooperative Societies were also made parties to the said Writ Petitions. In Writ Petition No. 7956/2008, the petitioner prayed for striking down GoM Nos. 419 to 425 dated 25.03.2008 and GoM No. 551 dated 27.03.2008, as being illegal, arbitrary, unconstitutional, without jurisdiction, void ab initio and being in violation of the fundamental rights and the judgment of the High Court dated 08.10.2007 in Writ Petition No. 13730 of 2006. However, in the Writ Petition filed by M/s Campaign for Housing and Tenural Rights (CHATRI) and Keshav Rao Jadhav, the petitioners prayed for setting aside the categorisation and guidelines of the policy itself, as envisaged under GoM No. 243 and GoM No. 244 dated 28.02.2005, along with striking down the consequential allotment of lands to Respondent Nos. 4 to 11 vide GoM Nos. 419 to 425 dated

25.03.2008 and GoM No. 551 dated 27.03.2008. All the above GoMs were challenged as being arbitrary and opposed to public interest, as well as violative of Article 14 of the Constitution of India and being contrary to the judgment dated 08.10.2007, in Writ Petition 13730/2006. Reference was also made to Rule 10 (a) of the 1975 Rules.

IMPUGNED JUDGMENT

22. The High Court rejected the preliminary submission made by the Respondents on the principle of res judicata in the second round of litigation. However, the Court held that principles of constructive res judicata would apply, emphasizing that the petitioners in Writ Petition No. 13730/2006 should also have challenged GoM Nos. 243 and 244. Reference was made to the judgments of this Court in Forward Construction Company and Others v. Municipal Corporation of Greater Bombay,14 and State of Karnataka and Another v. All India Manufacturers Organisation and Others,15 stating that in public interest litigations, when Writ Petitions are filed on identical grounds, the principles of res judicata and constructive res judicata are applicable.

23. The question of locus standi was decided in favour of the petitioners, who were recognized as public-spirited individuals espousing a public cause. The High Court held that the petitioners could legitimately claim that the measures for land allotment concern not only them but also the public at large. The plea of laches was dismissed, as the fresh allotment made after the judgment dated 08.10.2007, in Writ Petition 13730/2006, constituted a fresh cause of action. The Court further stated that the Writ Petitions acted as a class action.

24. Regarding the validity of GoM Nos. 419, 420, and 422 to 425, the High Court noted that the earlier decision dated 08.10.2007, in Writ Petition 13730/2006, 14 (1986) 1 SCC 100.

15 (2006) 4 SCC 683.

had outlined restrictions on land allotment for individuals who had already received similar government concessions, either directly or through Cooperative Societies. Contrary to the Respondents' claims, the Division Bench did not leave the final decision solely to the Government. It observed that the new GoM Nos. 419 to 425 failed to bar allotment to individuals who already owned land in their own name or that of their spouse or children. The earlier decision was unequivocal in stating that the principle of equality had been violated, as it did not restrict allotment of land to those who had already been allotted land at concessional rates or who privately owned a house or housing site.

25. The High Court further noted that while the earlier Division Bench could have quashed GoM No. 522, it chose to give the government an opportunity to comply with its directions. It went on to observe that the government improperly issued the new GoMs, rendering them invalid. It held that the allotment of land to those who already owned land in their own name or in the name of their spouse or children, cannot be sustained. As a result, the Division Bench quashed all the GoMs in its judgment dated 05.01.2010, and directed that the various parcels of land be restored to the Government. Fresh allotments could be made only after issuing new GoMs in accordance with the

High Court's directions.

CONTENTIONS AND ARGUMENTS RAISED BY THE PARTIES

26. To avoid prolixity and repetition, we will not separately refer to the arguments raised by the counsels for Cooperative Societies and their members as well as State of Telangana on one side, and the counsel for the Writ Petitioners, who, as noted above, have also challenged the impugned judgment.

27. The contentions and pleas raised by the counsel for the Cooperative Societies, its members, and State of Telangana, can be crystallised as:

(i) Successive governments have allotted lands in Hyderabad at concessional rates till 1989.

(ii) The GoM Nos. 419 to 425 were issued after almost 18 years for allotment of housing sites as a one-time benefit.

(iii) Allotment to members of AIS, government service, etc. on preferential basis does not violate Article 14 of the Constitution of India, as these officers constitute a separate class. Government servants play a vital role in governance and contribute to the society through their toil and sacrifice. They have an unwavering commitment towards societal welfare and public services. However, at the same time, their salary and pay structures never match those of their counterparts in the private sector. Their carry home pay is much less than the persons with similar level of education and experience in the private sector. There is much less scope for wealth accumulation. Post-retirement benefits are also limited. They suffer on account of opportunity cost. Due to the transferable nature of their jobs, they do not have a permanent residence and, therefore, the scheme envisages allotment of housing sites to enable them to have a semblance of residential security.

(iv) The allotment of housing sites, in view of the aforesaid differentiation and classification, has a rational nexus and objective. The policy provides stability to the lives of these officers and reduces dependence on government accommodation. It is a symbolic gesture of the government’s commitment to the welfare of the officers given the importance of their role and the challenges they face. No government largesse is given to the government employees.

(v) The Cooperative Societies to whom land has been allotted have made substantial payments towards the price of the plots as also towards stamp duty.16 In many cases, the employees have retired and in some cases they have even died without getting benefit of the plots though they had made payments. Some of the societies have also undertaken development work at their own expense.

(vi) Since journalists constitute a separate class, several Governments have allotted housing sites to them at concessional rates.

(vii) Allotment of plots at the basic rate, is legal and valid. Price determination falls within the exclusive domain of the Executive.

Procedure under the law has been duly followed. Reliance is placed upon Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F17 and the alienation rules framed thereunder which we shall refer to subsequently.

(viii) Basic market value is determined by the Collector as per the Telangana Revision of Market Value Guideline Rules, 1998 which have been made in exercise of the power under Section 47A of the Indian Stamp Act, 16 The details of the payments made by some of the Cooperative Societies towards the land cost and infrastructure development and conversion charges is as under:

• Respondent No. 4 – M/s Indira Legislators Mutually Aided Cooperative Housing Society has spent more than Rs. 20 crores.

• Respondent No. 6 – Adarshnagar Mutually Aided Cooperative Housing Society has spent more than Rs. 10 crores.

• Respondent No. 7 – Koh-Ei-Noor Mutually Aided Cooperative Housing Society Ltd. has spent around Rs. 9.75 crores.

• Respondent No. 8 – Jawaharlal Nehru Journalists Mutually Aided Cooperative Housing Society has spent around Rs. 13.8 crores.

• Respondent No. 9 – M/s Indian Revenue Services Officers' (Income-Tax) Housing Society has spent around Rs. 3.9 crores.

17 Year 1906 according to the Gregorian Calendar.

1899. Sale value cannot be less than the basic value. Since market value is highly volatile, there cannot be any uniform system of determining the market value. It cannot be argued, therefore, that the land has been granted at a concessional rate as it has been sold at basic market value.

(ix) There are enough safeguards in the impugned GoMs which ensure that the allotments made are not maliciously converted into a profiteering exercise. One such safeguard is that allotment is not made directly to individuals, but through a society. Further, an employee is entitled to such allotment only once during her/his service. A cut-off date is also prescribed. If both spouses are in government service, only one of them is eligible for land allotment. The allotment is not alienable or transferable by any instrument, including GPA, for a period of ten years from the date of allotment.

(x) Allotments to specified categories also includes family members of AIS officers who died in harness prior to their retirement, including those killed by Naxalites while on duty, and had not availed facilities of allotment of housing sites at concessional rates.

28. On behalf of the Writ Petitioners, it is submitted that:

(i) A policy or an executive decision should be backed by a social and welfare purpose. It should not be for the profit or benefit of private individuals or a particular class. Public interest should be the paramount consideration. Departure from these principles should be for compelling reasons that must be rational and not suggestive of discrimination, bias, jobbery or nepotism.

(ii) Land is a natural resource and being so it should be expended to best subserve the common good. It should not be dissipated at a consideration lower than the actual worth. One set of citizens, without good reason and justification, cannot prosper at the cost of the other set of citizens.

(iii) Valuable government property of around Rs. 10,000 crores belonging to the people of the State, which is held in trust by the State Government, is sought to be transferred in favour of the privileged section or class of persons without an overwhelming or legitimate public purpose. The eight categories of persons include MLAs, MPs, officers of the AIS, journalists, Judges of the Supreme Court and High Court, State Government employees, etc.

(iv) The size of plots which are being sold at the basic price clearly shows arbitrariness and discrimination as Judges of the Supreme Court and High Court, MPs, MLAs, and officers of the AIS are being allotted plots of 500 square yards, whereas others have been allotted smaller plots.

(v) Almost all MPs, MLAs, Judges of the Supreme Court and High Court, officers of the AIS and even journalists, already own a plot or a house within the State. Therefore, they should not be shown any indulgence in distribution of the State's largesse which would allow them to profiteer at the cost of the State and the common man.

(vi) The State Government had acquired 5,000 (five thousand) acres of land in various villages in Ranga Reddy District for Information Technology projects, Biotech Park, Apparel Park, Discovery City and Hardware Park etc. The landowners were poor agriculturists who were paid meagre amounts when their lands were acquired. The land is now being transferred to the privileged section of the society without a public auction, on payment of an amount which is much less than the market value. While the allottees will become rich overnight, the villagers and the agriculturists who were the erstwhile owners of the land, along with the general public and the society, will be denied the benefits of the surged land prices.

(vii) Past allotments, if any, made contrary to law, would not justify allotments in the present date, if the same were in violation of the rule of law and Article 14 of the Constitution of India. While the State is entitled to frame and take policy decisions, such decisions cannot be arbitrary and violate the principles of equity and fairness. The Constitution of India does not vest absolute discretion with the Executive. Public interest is the paramount consideration. Land, including property, should be sold and disposed of by public auction or by inviting tender. It is the duty of the court, as a policy, to set the wrong right, and not allow perpetuation of the wrongdoing.

(viii) Land in the concerned area is scarce, as is accepted by the Cooperative Societies, its members and others. This cannot be a reason to make preferential allotment to a select few who are the privileged or better off members of our society. Allotment of government land to such members is contrary to public interest, when a considerable portion of the population of the State lives below the poverty line, struggling for basic amenities, and is without shelter. The impugned land allotment policy is a cloaked attempt of the Executive at the aggrandisement of certain privileged groups such as bureaucrats, Judges, journalists etc.

(ix) Allotment of individual housing plots to persons belonging to weaker sections of the society in Hyderabad and Ranga Reddy district was prohibited by the Government Memo dated 17.11.2004 on the ground that there is paucity and dearth of government land in those areas.

Construction of only G+3 multi-storeyed flats was allowed. However, in case of the respondents, except for Respondent No. 1 – M/S Campaign for Housing and Tenural Rights (CHATRI) in C.A. No. 3792/2011, all Cooperative Societies have been allowed to make allotment of plots to its members. No principle has been followed and there is no justification for taking the said decision, which is without any rhyme or reason.

(x) Reliance placed upon the 1975 Rules is misplaced as they do not have any application. Allotment of housing sites is governed by Assignment of House Sites in Villages & Towns in Telangana Area Rules, 1975. This aspect, as mentioned above, will be referred to subsequently. ANALYSIS – RES JUDICATA AND CONSTRUCTIVE RES JUDICATA

29. The issue with regard to res judicata and constructive res judicata has been raised before us and was also argued before and considered by the High Court in the impugned judgment. The plea of res judicata was rejected by the High Court, but it upheld the plea of constructive res judicata raised by the Cooperative Societies, their members and the State Government.

30. In Forward Construction Company (supra), this Court, relying upon Explanation (IV)18 to Section 11 of the Code of the Civil Procedure, 1908,19 18 Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

19 For short, “CPC”.

observed that any matter that might or ought to have been made a ground of attack in a former suit is deemed to have been made a matter directly or substantially an issue in the said suit. Therefore, res judicata impacts not only the actual matter determined, but every other matter which the parties might or ought to have litigated and have decided as incidental to, or essentially connected with the subject matter of the litigation. It includes every matter coming into the legitimate purview of the original action, both in respect of the matters of claim and defence. The judgment explains that the underlying principle in Explanation (IV) is that where the parties have had an opportunity of controverting a matter, that should have been taken to be the same thing as if the matter had been actually controverted and decided.

31. However, in the said case the contention relying upon Explanation (IV) was rejected observing that when a matter has been constructively in issue, it cannot be said to have been actually heard and decided. Reference was also made to Explanation (VI) to Section 11.20 It is observed that the said explanation will apply when the conditions mentioned in that explanation are satisfied. This means that the Court should be satisfied that the decision in the litigation shall bind all persons interested in the right litigated. Onus of proving want of bona fides in respect of the previous litigation is on the parties seeking to avoid the said decision. Referring to the Explanation, it is said that Section 11 applies to public interest litigation as well. Such litigation has to be a bona fide litigation in respect of a right which is common and agitated in common with others. In the said case, this Court approved the decision of the High Court 20 Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. that Section 11 will not be applicable in view of the finding recorded by the High Court, observing that the first Writ Petition was not a bona fide one.

32. In All India Manufacturers Organisation and Others (supra), this Court examined the question of res judicata observing that it is based upon larger public interest, being founded on two grounds: firstly, no one should be vexed twice for one and the same cause; and secondly, there should be an end to the same litigation. This Court further observed that Section 11 is a statutory recognition of the principle of res judicata and, therefore, not a complete code, or exhaustive of the general law and principle of res judicata. This Court thereafter observed, that a judgment in public interest litigation, when the litigation is bona fide, operates in rem. It binds the public at large. Thereafter, it examined Explanations (III) and (IV) to Section 11. Specific reference is made to the judgment in Greenhalgh v. Mallard,21 which observes that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of the same issue which has already been decided. This principle will equally apply to every other matter where the parties might or ought to have litigated. The principle applies when issues have been decided incidentally or essentially connected with the subject matter of litigation so as to come within the purview of the original action both in respect of the matter of claim and defence.

33. In V. Purushotham Rao v. Union of India and Others,22 a question that arose before this Court was whether the principle of constructive res judicata should be applied as there was an earlier

judgment. The contention was rejected as 21 (1947) 2 All England Reporter 255 (CA).

22 (2001) 10 SCC 305.

being devoid of any substance, by observing that the earlier Writ Petition under Article 32 was regarding cancellation of 15 allotments of petroleum and gas dealerships and final directions given to the High Court to dispose of the pending Writ Petition after examining the individual cases. Clearly, in the present matter also, in the first litigation and decision which has been quoted above, allotments made were quashed and therefore, the effect thereof was that none of the Cooperative Societies or its members would have been entitled to any benefit.

34. A more authoritative pronouncement on the said subject is to be found in a recent decision of this Court in National Confederation of Officers Association of Central Public Sector Enterprises and Others v. Union of India and Others,23 wherein it takes notice of the argument relating to applicability of res judicata and constructive res judicata to PILs. This judgment not only examines the provisions of Section 11 of the CPC but the judgment of this Court in Rural Litigation and Entitlement Kendra v. State of U.P. ,24 wherein it is observed that in PILs, every technicality in procedural law is not available in defence. Therefore, it would be wrong to dismiss a matter involving grave public importance, to entertain the plea of res judicata. Reference was also made to All India Manufacturers Organisation and Others (supra) which also elucidates the question of bona fides. It is observed that the petitioner therein who had filed the first litigation had special technical expertise on the matter to impute the project on the ground that he did. Further, the first judgment had references to the issue of plan, types of plan required, etc. 23 (2022) 4 SCC 764.

24 1989 Supp (1) 504.

Lastly, the claims and the arguments raised in the second petition were largely and substantially same in the first petition. After referring to the first judgment, it is observed:

> "35. As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised should have been raised on an earlier occasion by way of a public interest litigation. It cannot be doubted that the petitioner in Somashekar Reddy was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy, as a public interest litigation, could bar the present litigation."
>
> 35. The main argument raised on behalf of the Cooperative Societies and its members is that the principle of res judicata and constructive res judicata would apply in the present case. We are of the opinion that the question of res judicata will certainly not

> apply, as the previous judgment did not, as accepted by everyone, examine the constitutional validity of GoM Nos. 243 and 244. GoM Nos. 420, 422 to 425 dated 25.03.2008 had not been issued at the time the said judgment was pronounced and hence, could never have been challenged.

On the question of constructive res judicata, we must accept that the same will have limited application to public interest litigation.

36. The contention is that Writ Petition No. 13730 of 2006 was filed in public interest by Mr. V.S. Bose, Dr. Rao V.B.J. Chelikani and Mr. O.M. Debara, which petition was disposed of vide judgment dated 08.10.2007. The judgment, as noticed above, specifically records that the petitioners therein had not challenged GoM Nos. 243 and 244 dated 28.02.2005. However, this judgment had in fact quashed the allotment made in terms of GoM No. 522 dated 04.05.2006, insofar as the GoM had permitted allotment of land to individuals, who are not members of Cooperative Societies and groups, or who may have received benefit of concessional allotment, either in individual capacity or as a member of a Cooperative Society or group to which preferential allotment had been made. The said judgment directed that the Government should identify the category of persons who may form a new Cooperative Society, get the same registered and make an application as a group for the purpose of allotment of land in terms of the policy contained in GoM Nos. 242 and 243 dated 28.02.2005. It further ruled that all allotments must be in accordance with the stipulations in GoM Nos. 242, 243 and 244. Further, the Court observed that the Government would be well advised to incorporate a condition of inapplicability of the policy to those who own a house or housing site in their own name, or in the name of their spouse or children, so as to make it applicable to all future allotments. We would like to quote the relevant paragraphs from the judgment:

> "In the result, the writ petition is allowed and G.O.Ms.No.522, dated 04.5.2006 is quashed insofar as it provides for allotment of land to individuals, who are not members of the societies/groups and who may have received the benefit of concessional allotment from the government earlier or as member of any society or group to which concessional allotment was made. G.O.Ms.No.1424, dated 28.9.2006 whereby the land has been earmarked for respondent No.4 is declared to be in consonance with the policy contained in G.O.Ms.No.243, dated 28.2.2005 subject to the rider that all the restrictions contained in that G.O. will apply to the allotment of land by respondent No.4 to its members. The government will also do well to incorporate an additional restriction against the allotment of land to those who own house or house-site in their own name or in the name of their spouse or children and make the same applicable to the allotment made to respondent No.4 and all future allotments, which may be made in accordance with the policy enshrined in G.o.Ms.Nos.242 and 243 dated 28.2.2005.

However, it is made clear that this order of ours will not preclude the government from making allotment to societies or groups of the identified categories in accordance with the policy contained in G.O.Ms.No.243, dated 28.2.2005 and it will be open to the identified categories of persons to form new society and get the same registered or make applications as groups for the purpose of

allotment of land in terms of the policy contained in G.O.Ms.No.243, dated 28.2.2005.

Before parting with the case, we consider it necessary to mention that the provision contained in the impugned G.O. for processing of the applications of the individual High Court Judges by the sub-committee comprising Advocate General, Secretary, Legal Affairs and Registrar General, A.P. High Court, with senior-most among them being its Chairman had the pernicious effect of demeaning the status of the members of the superior judiciary and seriously eroding the confidence of the common man in the system of administration of justice because, then the individual Judges would have been required to make applications for allotment of land to the government and their applications would have been processed by a committee comprising two officers who are constitutionally subordinate to the High Court. It is a matter of satisfaction that the government has taken corrective measure, removed the offending clause and earmarked the land for respondent No.4, which is bound to be allotted to the members of the said respondent, who do not suffer from any disability incorporated in G.O.Ms.No.243 and the restriction, which may be imposed by the government in terms of the observations made in this order."

37. In view of the legal position, we reject the contention of the Cooperative Societies etc. that the principle of constructive res judicata should apply to our examination of the challenge to GOM Nos. 243 and 244. We, therefore, set aside the reasoning of the High Court to this extent.

38. We believe that the principles of constructive res judicata should not have been applied, given the significant public interest at stake in this public interest litigation. It is clear that GoM Nos. 243 and 244 were not part of the challenge in the first litigation, as the petitioners then believed that simply quashing the allotments would suffice. Once the allotments were cancelled and the Writ Petition was allowed, the State of Telangana had the opportunity to re-evaluate the entire issue in light of the findings recorded.

39. It will not be correct to put fetters on the members of the public in filing a Writ Petition challenging GoM Nos. 243 and 244 in this factual background. Constructive res judicata applies only when the cause of action is identical. In our view, the causes of action in the two litigation proceedings should not be considered identical, as the first litigation focused on the allotment and its terms and conditions. GoM Nos. 243 and 244 are separate and distinct from the allotment itself, and challenging these notifications constitutes a separate and independent cause of action.

CONSTITUTIONAL VALIDITY OF IMPUGNED GOVERNMENT MEMORANDA

40. To assess the constitutional validity of GoM Nos. 243 and 244 dated 28.02.2005; GoM Nos. 420, 422 to 425 dated 25.03.2008 and GoM No. 551 dated 27.03.2008; it is crucial to consider the factual context of their stipulations.25 The core issue at hand pertains to the distribution of State largesse—the generosity exercised by the State in distributing public resources—in this instance, public land in the State of Telangana. The term "State largesse" often implies a level of discretion in how these resources are allocated and can be seen as a reflection of a government's priorities or policies. Consequently, the exercise of such "generosity" or "discretion" has significant implications for the citizenry, their rights, and the functioning of democracy.

25 See paragraphs 7 and 8 of this judgment for specifics of GoM Nos. 243 and 244.

41. The question that arises is – Can the Government, like any private individual, have the absolute discretion to frame policy, distribute resources and enter into a contract with whomsoever it pleases, on any terms and conditions it so desires?

42. In Erusian Equipment and Chemicals Ltd. v. State of West Bengal,26 this question was posed to this Court. The then Chief Justice,27 on behalf of the Bench, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal. When the Government is trading with the public, the democratic nature of Government demands equality coupled with an absence of arbitrariness and discrimination in such transactions. The activities of the Government have a public element and, therefore, they should be conducted with fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly, without discrimination and without adopting an unfair procedure.

43. In Ramana Dayaram Shetty v. International Airport Authority of India,28 relying upon the principle established by Erusian Equipment (supra), this Court, observed:

> "...This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, 26 (1975) 1 SCC 70.
>
> 27 A.N. Ray, CJI.
>
> 28 (1979) 3 SCC 489.

quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

44. These principles were reiterated in Common Cause, A Registered Society v. Union of India,29 where this Court quashed certain petroleum pump allotments made by the Minister in exercise of his discretionary power. This Court observed:

> "22. The Government today — in a welfare State — provides large number of benefits to the citizens. It distributes wealth in the form of allotment of plots, houses, petrol

> pumps, gas agencies, mineral leases, contracts, quotas and licences etc. Government distributes largesses in various forms. A Minister who is the executive head of the department concerned distributes these benefits and largesses. He is elected by the people and is elevated to a position where he holds a trust on behalf of the people. He has to deal with the people's property in a fair and just manner. He cannot commit breach of the trust reposed in him by the people."

45. In Shrilekha Vidyarthi v. State of Uttar Pradesh,30 this Court unequivocally rejected the argument of absolute discretion of the administrative authorities and immunity of their action from judicial review. The Court observed:

> "21. ... In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.
>
> xx xx xx

29 (1996) 6 SCC 530.
30 (1991) 1 SCC 212.

> 29. It can no longer be doubted at this point of time that Article 14 of the Constitution of India applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional." (emphasis supplied)

46. Thus, time and again, this Court has held that while the power to distribute and redistribute public assets and resources lie within the State's discretion, such discretion is not absolute. Article 14 and the logic of equality impose fetters on the exercise of this discretionary power. Therefore, it cannot be questioned or contested that state policy and executive action must satisfy the rigours of Article 14.

47. This leads us to the subsequent inquiry – how do we ascertain whether a State policy or executive action has violated the fetters imposed by Article 14? In other words, what are the tests applicable to evaluate the legality of State conduct in terms of Article 14? Do GoM Nos. 243 and 244 dated 28.02.2005; GoM Nos. 420, 422-425 dated 25.03.2008 and GoM No. 551 dated 27.03.2008 pass the constitutional muster?

48. The test of reasonable classification, developed several decades ago, continues to be a dominant test permeating our constitutional discourse. It consists of two prongs:

> (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group; and
>
> (ii) the differentia must have a rational relation with the object sought to be achieved by the statute/policy in question.

49. Referring to the two-fold classification test, a Constitution Bench of this Court in Subramanian Swamy v. Director, Central Bureau of Investigation,31 emphasised that there must be a nexus between the basis of the classification and the object of the legislation/policy under consideration. The Court also referred to its earlier Constitution Bench decision in Ram Krishna Dalmia v. Justice S.R. Tendolkar,32 which observes that the legislature is free to recognise varying degrees of harm and may confine its restrictions on classification to those cases where the need is most evident. However, the courts can interfere when there is nothing on the face of law or the surrounding circumstances which reasonably support the classification. In such cases, the presumption of constitutionality does not extend to suggesting that there are always undisclosed reasons for subjecting certain individuals or entities to discriminatory legislation. The rationale for classification may be specified in the statute, policy etc., or inferred from the surrounding circumstances known or brought to the notice of the court.

50. In Nagpur Improvement Trust v. Vithal Rao and Others,33 a Constitution Bench of this Court emphasised that the object itself should be lawful and cannot be discriminatory. If the object is to discriminate against a section of the minority, such discrimination cannot be justified on the grounds of reasonable classification, even if it has a rational connection to the intended objective.

51. In a reference made to this Court under Article 143(1) of the Constitution of India regarding the constitutional validity of the Special Courts Bill, 1978, a 31 (2014) 8 SCC 682.

32 AIR 1958 SC 538.

33 (1973) 1 SCC 500.

seven-Judge bench of this Court in In Re: The Special Courts Bill, 1978,34 concluded that the State possesses the authority to enact laws that operate differently on various groups or classes of individuals to achieve specific ends. Constitutional command to the State to afford equal protection of laws sets a goal that cannot be achieved through rigid formulae. Therefore, courts should not demand delusive exactness or apply doctrinaire tests. Classification is justified as long as it is not palpably arbitrary. Laws must be applied equally to all individuals placed in similar situations, and reasonable classification involves segregating groups based on shared properties and characteristics. This power of classification enables the State to recognise and deal with the needs and exigencies of the society as suggested by experience, which includes recognition of given degree of evil. What is

necessary is that there should be a nexus between them.

52. The basis of classification, and object of the legislation are distinct things.

Article 14 postulates the need for a rational nexus. Therefore, mere designation of a classification based on an identified objective does not lead to an automatic satisfaction of Article 14. Such an approach can devolve into legal formalism, which risks disregarding the substantive implications of the constitutional guarantee of equality. This Court, to avoid such formalism, has transitioned from an exclusive reliance on the test of classification to a concurrent application of the doctrine of arbitrariness when actions are not grounded in valid reasons. Article 14 of the Constitution prohibits class discrimination by conferring privileges or imposing liabilities on individuals arbitrarily selected from a larger group in similar circumstances concerning the 34 (1979) 1 SCC 380.

privileges sought or the liabilities imposed. The classification must never be arbitrary, artificial or evasive.

53. The foundations of arbitrariness in the context of the classification test were laid by Bose J. in State of West Bengal v. Anwar Ali Sarkar35 and subsequently in Kathi Raning Rawat v. State of Saurashtra36. Bose J. has questioned the propriety of the classification test by propounding that mere classification by itself is not enough, for the simple reason that anything can be classified and every discriminatory action must of necessity fall in some category of classification. Classification is nothing more than dividing of one group of things from another, and unless some difference or distinction is made in a given case, no question under Article 14 can arise. Mere classification is only a means of attaining the desired result. Therefore, the ends cannot be entirely ignored and consequently, the Court in a limited way is not precluded from examining the legitimacy of the legislative object.

54. In a number of decisions of this Court, a similar approach has been taken. In State of Jammu and Kashmir v. Triloki Nath Khosa,37 this Court cautioned that classification can pose a danger of creating artificial inequalities and thus to overdo classification is to undo equality. Therefore, classification has to be demonstrably based upon substantive differences and should promote relevant goals that have constitutional validity.38 The legitimacy of the object, in a limited way, is a necessary element to be considered for assessing validity 35 (1952) 1 SCC 1.

36 (1952) 1 SCC 215.

37 (1974) 1 SCC 19.

38 Also see Hiral P. Harsora and Others v. Kusum Narottamdas Harsora and Others, (2016) 10 SCC 165, and Union of India v. N.S. Rathnam & Sons, (2015) 10 SCC 681, where similar views have been expressed.

of any classification. The classification must be just and fair, which necessitates that the court scrutinizes the underlying purpose of the law. Many a case will ex-facie or demonstrably meet the

equity compliance, some will be declared constitutional after in-depth judicial examination. This Court in LIC v. Consumer Education Centre,39 had accordingly struck down an insurance policy which was limited to employees of the Government or reputed commercial firms, as violating Article 14 on the ground that it did not meet the test of equality, fairness and justice. Significantly, the Court had observed that the doctrine of classification is simply a subsidiary rule that the judiciary has evolved to give practical content to the doctrine of equality. In Indian Council for Legal Aid and Advice v. Bar Council of India,40 the stipulation that advocates must be under the age of 45 for enrolment was invalidated as being discriminatory, despite its intention to address specific demographics. The criterion was found to be unreasonable and consequently, impinging upon the principle of equality.

55. Thus, it is crucial to recognise that the unreasonableness of a law, policy or state action can be both relative and absolute. First, unreasonableness can be comparative, meaning it is assessed in relation to something else. In Ajay Hasia v. Khalid Mujib Sehravardi,41 this Court stipulated that a policy in question must satisfy two requirements under the reasonable classification test – (a) the classification must be reasonable; and (b) it must fulfil the twin conditions of intelligible differentia and rational nexus. Second, a policy may perpetrate discrimination inherently, instead of inter se discrimination vis-à-vis 39 (1995) 5 SCC 482.

40 (1995) 1 SCC 732.

41 (1981) 1 SCC 722.

others. In A.L. Kalra v. Project and Equipment Corporation of India Ltd.,42 this Court held that one need not confine the denial of equality to a comparative evaluation between two persons to arrive at a conclusion of discriminatory treatment. An action/policy can per se be arbitrary, and such arbitrariness in itself constitutes a violation of the equal of protection under law.

56. It follows that the rigours of Article 14 cannot be interpreted in a narrow, pedantic or lexicographical manner.43 The doctrine of classification is neither a mere restatement of Article 14 nor is it the objective and end of that Article. 44 In a catena of judgments, this Court has held that the reasonable classification doctrine is a judicial formula to assess whether legislative or executive actions are arbitrary, thus amounting to a denial of equality.45 It is arbitrariness that lies at the heart of the reasonable classification test. The principle of reasonableness – both legally and philosophically – is an essential element of equality or non-arbitrariness, pervading Article 14 like a “brooding omnipresence”.46

57. In recent pronouncements, this Court has clearly expounded India’s equality jurisprudence – from a reliance on the test of classification and arbitrariness to a more substantive interpretation of equality. For instance, A.K. Sikri J., in National Legal Services Authority v. Union of India and Others,47 had referred to the relationship between equality and dignity. In Navtej Johar v. 42 (1984) 3 SCC 316, 328.

43 Ibid.

44 Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1. 45 Ajay Hasia (supra); Shrilekha Vidyarthi (supra).

46 Maneka Gandhi v. Union of India, (1978) 1 SCC 248. Also see Shayara Bano v. Union of India, (2017) 9 SCC 1.

47 (2014) 5 SCC 438.

Union of India,48 D.Y. Chandrachud, J. (as his Lordship then was) explicitly articulated the principle of substantive equality and remarked:

> "Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula:
>
> the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism lies in its inability to lay threadbare the values which guide the process of judging constitutional rights. Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values – of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in state action. As our constitutional jurisprudence has evolved towards recognizing the substantive content of liberty and equality, the core of Article 14 has emerged out of the shadows of classification. Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavor and in every facet of human existence."
>
> 58. Similarly, in Lt. Col. Nitisha v. Union of India,49 the Court referred to jurisprudence relating to indirect discrimination which may also be a valid reason to strike down a legislation. This decision refers to the principle of substantive equality and that the right of equality should not be seen through a narrow lens. The court should examine the impact of the law, and whether the law or a policy adversely affects members of a particular disadvantaged group disproportionately. In other words, when the courts examine the question of rationality of a classification, they in a way also examine non-

classificatory arbitrariness. No doubt, in doing so, the court does show a degree of deference. There are decisions of this Court which hold that under- 48 (2018) 10 SCC 1.

49 (2021) 15 SCC 125.

inclusiveness will not result in invalidity of a statute, and that the State is not obligated to extend a policy to all such cases to which it would otherwise apply.50 These decisions are based on the premise that a legislation is permitted to recognise degrees of harm and may confine its restrictions or benefits to those cases where the need is the clearest. Legislative or executive action does not deal with absolutes.

59. Thus, over the years, there is a discernible and marked shift from mere formal equality to the broader concept of substantive equality, which encompasses various dimensions of the principle of equality.51 On one hand, substantive equality focuses on correction of historical wrongs, checking stereotypes, stigma, prejudice etc.,52 while on the other, it also scrutinizes if a law or policy is inherently discriminatory. The latter principle applies when the legitimacy of the objective is flawed and manifests arbitrariness. We shall subsequently elaborate on the legal meaning of substantive equality.

60. This evolution of the law under Article 14 aligns with judicial decisions in the United States, United Kingdom, Canada, and South Africa. For our purposes, we will refer to some decisions of the Supreme Court of Canada that exemplify the development of Canada's approach to equality as articulated in Section 15 of the Canadian Charter of Rights and Freedoms, 1982.53 50 See Ram Krishna Dalmia (supra) and Chiranjit Lal Chowdhuri v. Union of India, AIR 1951 SC 41. 51 Jahnavi Sindhu and Vikram Aditya Narayan, “Equality under the Indian Constitution: Moving away from Reasonable Classification” (November 29, 2022). 52 Sandra Fredman, “Substantive Equality Revisited”, I.CON (2016), Vol. 14 No. 3, 712-738. 53 For short, “Canadian Charter”.

61. Section 15 of the Canadian Charter54 aims to provide substantive equality.55 To begin, in 1989, the Supreme Court of Canada, in Andrews v. Law Society of British Columbia,56 interpreted Section 15(1) of the Canadian Charter to include both direct and indirect discrimination. Subsequently, in Law v. Canada (Minister of Employment and Immigration),57 a three-fold test was laid down.58 This included identifying a comparator group of individuals in similar circumstances and determining whether the law's disadvantage constituted an impairment of human dignity. The Supreme Court of Canada later modified the test in R. v. Kapp,59 reframing the doctrine of substantive equality and held that it should prevail over formal equality. The court noted that the human dignity aspect, included in the third part of the Law v. Canada (supra) test, had not achieved the intended philosophical enhancement. 54 Section 15 – (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex or mental or physical disability. 55 A literal reading of the Constitution of India shows that our founders envisaged a progressive and substantive framework of equal protection of laws. See Article 14, read with Articles 15, 16, 17, and 18 of the Constitution of India.

56 [1989] 1 SCR 143.

57 [1999] 1 SCR 497.

58 The three-part test is as follows:

> A court that is called upon to determine a discrimination claim under s. 15(1) should make the following three broad inquiries:
>
> A. Does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics?
>
> B. Is the claimant subject to differential treatment based on one or more enumerated and analogous grounds?
>
> and C. Does the differential treatment discriminate, by imposing a burden upon or withholding a benefit from the claimant in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration?

59 [2008] 2 SCR 483.

However, human dignity remains a fundamental value underlying the principle of equality.

62. In the context of Section 15, which is divided into subsections (1) and (2)—the latter addressing reverse discrimination and ameliorative measures—the inquiry for classification under Kapp (supra) requires the government to demonstrate that a program has an ameliorative and remedial purpose and specifically targets a disadvantaged group identified by enumerated or analogous grounds. The test was further refined in Withler v. Canada (Attorney General),60 wherein the Supreme Court of Canada explicitly rejected the notion that formal equality alone is adequate, emphasizing the necessity of substantive equality, stating:

> "Substantive equality, unlike formal equality, rejects the mere presence or absence of difference as an answer to differential treatment. It insists on going behind the facade of similarities and differences. It asks not only what characteristics the different treatment is predicated upon, but also whether those characteristics are relevant considerations under the circumstances. The focus of the inquiry is on the actual impact of the impugned law, taking full account of social, political, economic and historical factors concerning the group. The result may be to reveal differential treatment as discriminatory because of prejudicial impact or negative stereotyping. Or it may reveal that differential treatment is required in order to ameliorate the

actual situation of the claimant group."

63. Thus, the Supreme Court of Canada has significantly reshaped the comparator group requirement, providing a broader and wider meaning to equality claims. The test poses two questions – (1) Does the law create a distinction based on an enumerated or analogous ground? and (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotypes? The purpose of the distinction component is to demonstrate that the claimant has been treated 60 [2011] 1 S.C.R. 396.

differently from others—specifically, that they have been denied a benefit available to others or are burdened in a way that others are not, due to personal characteristics that qualify as enumerated or analogous grounds.

64. In Quebec (Attorney General) v. A,61 the court observed that substantive equality is not compromised merely because a disadvantage is imposed; rather, it is denied when that disadvantage is unfair or objectionable. This is often the case when the disadvantage perpetuates prejudice or stereotypes. Such discrimination can overlook significant harms, including marginalization, oppression, and the deprivation of essential benefits. The focus should be on the execution and impact of the law, rather than the government's intent, when applying this test.

65. Section 15 is violated when distinctions lead to the perpetuation of arbitrary disadvantages based on an individual's membership in an enumerated or analogous group. Importantly, the test requires a flexible and contextual inquiry. Lastly, we will refer to the decision of Fraser v. Canada (Attorney General),62 where the court summarized the law on the adverse effects of discrimination, noting that this occurs when a seemingly neutral law disproportionately impacts members of groups protected on the basis of enumerated or analogous grounds.

66. In this manner, the development of equality jurisprudence in Canada bears resemblances with the progressive development of constitutional jurisprudence in India. In the Indian context, the mere fact that a policy caters 61 [2012] 1 SCR 61.

62 [2020] 3 SCR 113.

to a distinct, intelligible class, does not automatically imply that the rigours of Article 14 are satisfied. The second prong of the reasonable classification test mandates that the distinction created by the policy between the two classes must have a rational nexus with the object that policy seeks to achieve. Furthermore, the objective of the classification should not itself be illogical, unfair and unjust.

67. The substantive equality test, as enunciated in our recent pronouncements, is broader and is not confined to a single principle. No doubt, it accommodates the legislature and the executive's right to achieve structural change, but this right should be exercised to benefit those who are disadvantaged, marginalized, or those in need or grouped, while excluding others from the benefit or for imposition of the burden or obligation. It is crucial for the Court to consider both the intent behind legislation

or policy and its practical impact, especially when it reflects discrimination based on proscribed grounds.63

68. Substantive equality is satisfied when the law or policy genuinely intends to and provides, an equal chance of satisfying the criteria for access to a particular social or economic good. It respects individual dignity, which encompasses three characteristics: (i) a sense of self-worth, (ii) protection of basic choices an individual makes, and (iii) protection of individuals against harmful stereotypes. Lastly, substantive equality is achieved when legislation or policies enhance participation and representation, countering both political and socio-economic exclusion. The last aspect permits anti-subordination, as it focuses on the group which has suffered the disadvantage and examines 63 The expression "proscribed grounds" has reference to Articles 15 to 18 of the Constitution of India. These Articles and their impact on Article 14, have been examined later. whether the legislation or policy aims at neutrality or incorporates affirmative action to rectify the disadvantage or discrimination. Anti-subordination promotes structural change and aims to rectify disadvantages. In this sense, substantive equality factors in multiple aspects of inequality offering a multidimensional approach that allows the Court to address the interplay of various aspects of equality, and equally accommodate differences instead of masking them with formal equality.64

69. A literal reading of the Constitution's equality provisions – Articles 14, 15, 16, and 17 which collectively form the core of equality – supports an interpretation of substantive equality. While these Articles are broadly interconnected, they also confer independent rights. Article 18, which prohibits the granting of titles to Indian citizens, aligns with this objective, serving as a response to the colonial practice of elevating certain Indians over others.

70. Article 15(1) explicitly bars discrimination on the grounds of race, religion, caste, sex, and place of birth. These can be loosely called proscribed grounds for classification.65 Classifications based on these criteria will be unconstitutional, unless permitted by clauses (3), (4), (5), and (6) of Article 15 of the Constitution of India, when they are justified on the ground of anti- subordination. Latter clauses specifically permit the State to create special provisions for women and children, and for the advancement of socially and educationally backward classes, including Scheduled Castes and Scheduled 64 Supra note 50.

65 However, as held, classification on the basis of proscribed grounds is not forbidden vide Article 14, albeit it should satisfy principles of anti-subordination and non-arbitrariness. Classification based on proscribed grounds must at the same time, to be valid, independently meet the mandate of Articles 15 to 18 of the Constitution. Articles 15 to 18 confer independent rights to equality, which are not diluted or foregone in compliance to Article 14. However, it would be rare that such a situation would arise, once the test of substantive equality is satisfied.

Tribes. These are anti-subordination grounds.66 The clauses permit provisions for their admission to educational institutions, whether aided or unaided by the State, with the exception of minority educational institutions. Under Article 15(6), the State is authorized to enact laws for the economically weaker sections, allowing for up to ten percent reservation in employment. Article 16, which deals with equality of opportunity in matters of public employment, prohibits discrimination

of any citizen on the ground or religion, race, caste, sex, place of birth or residence. However, it permits the State to make provisions for reserving appointments for backward classes that are inadequately represented, as well as for Scheduled Castes and Scheduled Tribes in State services.

71. Article 14, which provides for equality before the law, and mandates that the State shall not deny to any person equality before the law or equal protection of laws, does not specifically refer to a particular classification unlike Articles 15 and 16 of the Constitution, allowing greater legislative flexibility. This design is intentional; the framers understood that rigid classifications could hinder the legislature's ability to address emerging societal issues and adapt to the evolving needs of future generations. By avoiding specificity, the Constitution enables lawmakers to make laws on futuristic grounds which may arise with the struggles and challenges faced by the new generation.67 66 Anti-subordination grounds refer to the objectives of the legislation. They are not classifications. As in case of proscribed grounds for classification, in case of anti-subordination grounds, the court's scrutiny is not totally prohibited, albeit substantive equality test will be satisfied when anti-subordination principle is not violated, and the classification does not result in indirect discrimination. 67 See Lawrence v. Texas, 539 US 558, which dealt with the 14th amendment to the United States Constitution, observes that the framers knew that times could blind them to certain truths and later generations could see the laws once thought necessary and proper, in fact, serve only the oppressed. The Constitution endures, a person of every generation can invoke its principles in search for greater freedom.

72. Therefore, this Court has taken the view that Article 14 allows for reasonable and fair classification but prohibits class legislation. Classifications based on the categories outlined in Articles 15 and 16 are acceptable as long as they have a rational connection to their intended objectives. These classifications— such as those pertaining to other backward classes, scheduled castes and tribes, and women and children—aim to fulfil the principle of equal ends. This approach accepts and accommodates the said difference. They adopt an anti- subordination approach, treating these groups differently to promote greater equality. In this manner, Articles 15 and 16 of the Constitution of India explicitly recognize the necessity for legislative measures aimed at uplifting certain disadvantaged sections to achieve equality.

73. The substantive equality test will also fail in case the legislation or the policy, in its operation, results in indirect discrimination.68 The principle of indirect discrimination comes into play when legislation or policy applies equally to all but disproportionately disadvantages individuals or groups based on protected characteristics, which cannot be justified. It refers to inequality of results and outcomes. Substantive equality also encompasses equality of opportunity, addressing institutional discrimination and rejecting policies that promote imbalances rather than equalize starting points. Policies should not impose additional obstacles for those requiring protection, or who have faced historical discrimination or do so in the present.

74. Therefore, unless a law meets these criteria of substantive equality, it would violate Article 14 of the Constitution of India.

68 See Lt. Col. Nitisha (supra). Also see Anuj Garg and Others v. Hotel Association of India and Others, (2008) 3 SCC 1.

75. At this juncture, we will apply the law to the facts of the case. To quote from the GoM No. 242, the land allotment policy seeks to serve the following objective:

> "Providing shelter is amongst the top priorities of the Government. There are well defined schemes for providing housing for the poor. In so far as meeting the requirement of the other deserving sections of the society, there is no fixed policy and mechanism for alienation of land to such sections and Allotment was done case by case, for the land identified. Therefore, Government have decided to have a comprehensive policy of meeting housing requirement of targeted sections of society by creation of land bank and· accordingly order the following..." We would like to emphasise that the policy, while not targeted towards the poor, is also aimed towards "other deserving sections of the society", to meet their "housing requirement".

76. The category of people who have been identified as beneficiaries of this State largesse as "other deserving sections of the society" are: Judges of the Supreme Court and High Court, MPs, MLAs, journalists, State and Central Government employees. It would be apt to note that, not only are these classes of people being allotted land preferentially, the price of such land is also discounted to the basic rate, instead of the prevalent market rate.

77. The State of Telangana, in its defence, has contended that the abovementioned category of people forms a distinct class. However, we have already enunciated above that, not only must a distinct classification exist but such classification should not be arbitrary, artificial or artful, and should be rationally tailored to serve the objective.

78. In the present case, the principle of arbitrariness, as expounded in E.P. Royappa v. State of Tamil Nadu in its puritan form, is applicable.69 The classification giving State largesse to Judges of Constitutional Courts, MPs, MLAs, officers of the AIS, journalists, etc. favours a privileged segment of society, which is already better off compared to the vast majority of marginalized and socio-economically disadvantaged individuals. The benefits granted to these privileged and well-off classes come at a cost, as they effectively deprive and deny the essentials to the marginalized and socially vulnerable populations.

79. The allocation of land at basic rates to select privileged groups reflects a "capricious" and "irrational" approach. This is a classic case of executive action steeped in arbitrariness, but clothed in the guise of legitimacy, by stating that the ostensible purpose of the policy was to allot land to "deserving sections of society". Shorn of pretence, this policy of the State Government, is an abuse of power meant to cater exclusively to the affluent sections of the society, disapproving and rejecting the equal right to allotment of the common citizen and the socio-economically disadvantaged. It would not be wrong to say that the doctrine of manifest arbitrariness, as expounded in Shayara Bano v. Union of India is applicable.70

80. The arbitrariness inherent in the land allocation policy is further reflected in GoM No. 244. This order stipulates that if the available land is insufficient to meet the prescribed allocations for AIS officers, the size of the plots may be reduced according to a specified ratio. However, an exception is carved out for 69 (1974) 4 SCC 3.

70 (2017) 9 SCC 1; also see Navtej Johar (supra) and Joseph Shine v. Union of India, (2019) 3 SCC

39. Category 1 beneficiaries, which includes IAS, IPS, and IFS officers. This category is afforded preferential treatment without any justification for such a distinction, highlighting an undue bias in favour of the most privileged subset within an already irrational classification.

81. In this regard, members of the AIS have asserted that they are "underprivileged", or have made "sacrifices", which entitles them to the privilege of preferential land allotment at a discounted rate. We reject this argument as fallacious and untenable. Government servants, elected legislators, Judges in the Supreme Court and High Court, and prominent journalists do not belong to the "weaker" or per se deserving sections of our society, warranting special State reservations to land allotment.

82. Land is a finite and highly valuable resource, particularly in densely populated urban areas, where access to land for housing and economic activities is increasingly scarce. When the government allocates land at discounted rates to the privileged few, it engenders a system of inequality, conferring upon them a material advantage that remains inaccessible to the common citizen. This preferential treatment conveys the message that certain individuals are entitled to more, not due to the necessities of their public office or the public good, but simply because of their status. Such practices foster resentment and disillusionment among ordinary citizens, who perceive these actions as corrupt or unjust, thereby eroding trust in democratic institutions. This policy undermines solidarity and fraternity, reinforcing societal hierarchies rather than actively working to dismantle them.

83. The policy has wider economic ramifications as well. When land is offered at a discounted rate, it distorts the natural market forces that govern the value of land. The true market price of land reflects its demand and utility, but when individuals receive land at a discount, it artificially devalues the property and consequently diminishes public revenue. This has severe financial ramifications for the public exchequer.

84. In Ram & Shyam Co. v. State of Haryana,71 this Court observed that, typically, the State is under an obligation to sell public property only at the market price, with the sole exception of achieving a constitutionally recognised public purpose:

> "...Disposal of public property partakes the character of a trust in that in its disposal there should be nothing hanky panky and that it must be done at the best price so that larger revenue coming into the coffers of the State administration would serve public purpose viz. the welfare State may be able to expand its beneficient activities by the availability of larger funds. This is subject to one important limitation that

> socialist property may be disposed at a price lower than the market price or even for a token price to achieve some defined constitutionally recognised public purpose, one such being to achieve the goals set out in Part IV of the Constitution. But where disposal is for augmentation of revenue and nothing else, the State is under an obligation to secure the best market price available in a market economy...A welfare State exists for the largest good of the largest number more so when it proclaims to be a socialist State dedicated to eradication of poverty. All its attempt must be to obtain the best available price while disposing of its property because the greater the revenue, the welfare activities will get a fillip and shot in the arm..."

85. We are also of the opinion that, accredited journalists cannot be treated as a separate class for such preferential treatment. In fact, a careful study of the policy indicates that higher echelons of all the three wings of the government, —legislators, bureaucrats, and Judges of the Supreme Court and High Courts—have been afforded such preferential treatment. Journalists, who are considered the fourth pillar of democracy, have also been included. These four 71 (1985) 3 SCC 267.

pillars of democracy are expected to act as checks and balances on the arbitrary exercise of the State's power. However, the distribution of such extraordinary State benefits renders nugatory the very optics of healthy checks and balances within our democratic system.

86. Thus, the core framework of these policies suffers from the malaise of unreasonableness and arbitrariness. It reeks of colourable exercise of power whereby the policymakers are bestowing valuable resources to their peers and ilk, triggering a cycle of illegal distribution of State resources. The State holds all its resources in trust for its citizens, to be utilised in larger public and social interest. The State, including the three organs – Legislature, Executive and the Judiciary, are de facto trustees and agents/repositories which function and govern for the benefit of the citizens who are the beneficiaries.72

87. Thus, the allotment policy fails to satisfy the requirements of the two-pronged classification test coupled with arbitrariness. As noted earlier, the jurisprudence surrounding equality law has evolved beyond a purely technical analysis, embracing an approach that considers not only the intent behind legislation or policy but also its real-world impact. We are of the opinion that the policies in question are a relevant example to show that merely likes being treated alike can lead to injustice. The pursuit of consistency through classification, while appealing in theory, does not ensure that the classification is either appropriate or equitable in practice. The substantive equality in contemporary equality jurisprudence calls not for a conceptually tidy "test", but a multi-pronged approach to equality, which acknowledges the diverse ways 72 NOIDA Entrepreneurs Association v. NOIDA and Others, (2011) 6 SCC 508. in which inequality and discrimination may be perpetuated.73 To test the facts against the standards of substantive equality, we are of the opinion that Judges of the Supreme Court and the High Court, MPs, MLAs, officers of the AIS, journalists etc. cannot be treated as a separate category for allotment of land at a discounted basic value in preference to others. The object of the policy perpetuates inequality. The policy differentiates and bestows largesse to an advantaged section/group by resorting to discrimination and denial. It bars the more deserving, as well as those similarly situated, from access to the land at the same price. It promotes

social-economic exclusion, to favour a small and privileged section/group. The policy does not meet the equality and fairness standards prescribed by the Constitution.

88. Of course, the State has the discretion and duty under the Constitution, to distribute its resources to marginalised sections of society, or other imminent and deserving personalities, to the extent necessary to discharge their public functions. Personalities who contribute to the nation's progress through excellence in sports or other public activities may also be compensated through reasonable and non-arbitrary distribution of State largesse. We would also like to clarify that a policy or law allotting land to public servants may be justifiable provided such allotment is within the confines of Article 14. Unless the classification satisfies the twin prong test and the substantive equality benchmark, the mandate of Article 14 is not met. The State cannot exercise discretion to benefit a select few elites disproportionately, especially ones who are already enjoying pre-existing benefits and advantages. 73 The impugned policies are not in furtherance of anti-subordination principle, and they do not raise a presumption of constitutionality.

89. Reliance placed by some of the Cooperative Societies and members on the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317F, and the 1975 Rules, including Section 25,74 is misconceived. Section 25 states that the land can be assigned for special purposes and such assignment shall be lawful. However, it does not mean that the land can be allotted in violation of principle of equality enshrined under Article 14 of the Constitution of India.

90. Further, Rule 2(b) of the 1975 Rules states that alienation of land means placing land at the disposal of a third person for a public purpose or a specified cause. Alienation of land revenue, as defined in Section 2(c), means the grant of exemption from payment. Section 2(i) defines market value to mean value of the land that would fetch in the open market if sold, subject to appropriate charge for land revenue. Rule 10, which is relied upon by the Cooperative Societies and its members, states that notwithstanding anything contained in the rules, the Government, if it so desires, can sell or otherwise alienate the land or other property in Telangana area by following reasonable procedure, including public auction where alienation is deemed necessary. This rule does not support or assist the Cooperative Societies and their members in their argument.

91. At this juncture, it is worth noting that during the pendency of the Writ Petition before the High Court, several members of the Judiciary, to their credit, decided to withdraw their applications for allotment of land. Recognizing the 74 25. Assigning of land for special purpose to be lawful – When a village is under settlement, the Commissioner of Survey Settlement or the Commissioner of Land Records in that Village and in other cases with the sanction of the Board of Revenue, the Collector may, subject to the orders of the Government, set apart any Khalsa land not in the lawful occupation of any person or class for pasturage of cattle or for grass reserves or for other Government purposes or for the purposes of public benefit; provided that it does not interfere with any right of any person or class. The land so set apart shall not be otherwise appropriated without the order of the Board of Revenue. constitutional limitations and acknowledging that such allotment would violate Article 14, they made this decision upon thoughtful consideration. However, many others continued to defend the allotment, vigorously presenting arguments that they constituted a separate class with a rational nexus to the policy. These arguments, however, are devoid of merit and must be unequivocally

rejected.

CONCLUSION AND DIRECTIONS

92. In view of the aforesaid findings and discussion, we dismiss the appeals preferred by the State of Telangana, the Cooperative Societies and their members, and we allow the appeal preferred by Mr. Keshav Rao Jadhav challenging the judgment dated 05.01.2010 passed by the Division Bench of the High Court of Andhra Pradesh in Writ Petition Nos. 7956, 7997 and 23862 of 2008. The said Writ Petitions are allowed, thereby issuing a Writ of certiorari and quashing GoM Nos. 243 and 244 dated 28.02.2005 to the extent they classify MPs, MLAs, officers of the AIS/State Government, Judges of the Constitutional Courts, and journalists as a separate class for allotment of land at the basic rate. As a sequitur, GoM Nos. 419, 420, 422 to 425 dated 25.03.2008, and GoM No. 551 dated 27.03.2008, are declared to be bad in law, being violative of Article 14 of the Constitution of India, and are quashed by issuing a Writ of certiorari.

93. The interim directions passed by this Court in some of these cases will now stand merged with the final direction. Parties will be accordingly bound by the same.

94. We also deem it appropriate to pass an order of restitution and direct that the Cooperative Societies and their members, as the case may be, will be entitled to a refund of the entire amount deposited by them, including the stamp duty and the registration fee paid by them, along with the interest which may be quantified by the State of Telangana. The rate of interest will not exceed the Reserve Bank of India's rate of interest applicable from time to time, as may be deemed fit by the State of Telangana. The lease deeds executed by the State of Telangana in favour of the societies/members will be treated as cancelled. Similarly, development charges/expenses paid by the Cooperative Societies/members, as reflected in the books of accounts of the Cooperative Societies /members, duly certified by the income-tax returns, will be refunded to them along with interest at the rates specified.

95. It will be open to the State of Telangana to deal with the land in the manner it deems fit and proper and as per law, keeping in mind the observations and findings recorded in this judgment.

96. The appeals and the contempt petitions are accordingly disposed of. All pending applications also stand disposed of.

.....CJI.

(SANJIV KHANNA) .....J. (DIPANKAR DATTA) NEW DELHI;

NOVEMBER 25, 2024.