

(2003) 11 KAR CK 0027

In the Karnataka High Court

Case No : Writ Petition No. 5666-5675 of 2002

Shanthabai Shivappa Agasar and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Citation : (2004) ILR (Kar) 2614 : (2004) 1 KCCR 106 SN

Hon'ble Judges : N.K. Patil, J

Bench : Single Bench

Advocate : G.G. Chagashetti and I.R. Biradar, for the Appellant; H.B. Narayan, HCGP for R1 and B.S. Patil, for R-2 and 3, for the Respondent

Judgement

N.K. Patil, J.—In these petitions the petitioners, assailing the correctness of the resolution dated 7th December 2001 on the file of the fourth respondent vide Annexure El, have presented these petitions. Further, they have sought for a direction, directing the respondents to implement the list of beneficiaries as per the resolution dated 28th August 2001 vide Annexure D and also sought for issuing a suitable writ or order or direction as this Court deems fit in the facts and circumstances of the case.

2. The grievance of the petitioners in the instant Writ Petitions is that, the petitioners have been identified as beneficiaries for allotment of houses under the "Ashraya Scheme" (hereinafter referred to as the "Scheme") and accordingly, "a resolution was passed by the Ashraya Committee on 28th August 2001 in its meeting held for distribution of the sites/houses to the site less/houseless persons for the year 2001-2002. In pursuance of the said resolution, the name of the petitioners were found in the list identifying them as the beneficiaries for allotment of sites/houses constructed under the Scheme. When things stood thus, on the basis of the complaint from the Zilla Panchayath, Bijapur on 23rd November 2001 and the Government Circular dated 19th November 2001, the Committee which was constituted earlier, was abolished and the new Committee was constituted by the Government for identifying the

beneficiaries. It is also observed that, the earlier resolution passed by the Ashraya Committee may be re-considered afresh. In pursuance of the constitution of the new Committee, a meeting was conducted on the 7th December 2001 at 3 P.M under the Rajiv Gandhi Ashraya Housing Scheme and a resolution was passed, cancelling the earlier resolution passed by the Ashraya Committee on the basis that, the same is passed without following the procedure prescribed under the relevant provisions of the Act and the Notification issued by the Government. Aggrieved by the subsequent resolution passed, the petitioners have presented these petitions.

3. The principal submission canvassed by the learned Counsel appearing for the petitioners is that, these petitioners belong to economically weaker section of the society and that, they do not possess any site/house and that, they are entirely dependent on the income derived out of their coolie work. They also do not possess any agricultural land in their village. Taking into consideration the social and economic background of these petitioners, the Ashraya Committee, in its meeting held on 28th August 2001 had passed a resolution Identifying the petitioners as the beneficiaries and had held that, these petitioners are entitled for allotment of sites/houses constructed under the Scheme and their names find a place in the list of beneficiaries prepared by the said Committee. At present, it is their case that, without issuing any notice to these beneficiaries and without following the procedure, in pursuance of the subsequent resolution, the new Committee constituted has called for another meeting on 7th December 2001 and cancelled the earlier resolution passed by the earlier Committee on 28th August 2001. The subsequent resolution, cancelling the earlier resolution vide Annexure D is contrary to the material on record as well as contrary to the relevant provisions of the Act. Therefore, the petitioners are constrained to approach this Court by presenting these petitions.

4. Further the learned Counsel appearing for the petitioners vehemently submitted that, if the petitioners have not made out any case for quashing of the Impugned resolution dated 7th December 2001 vide Annexure E1, appropriate direction may be issued to the Committee - the third respondent herein at least, to consider the case of the petitioners, for allotment of houses, if they are available and if they are otherwise found eligible.

5. Per contra, the learned Counsel appearing for respondents 2 and 3 and the learned Government pleader appearing for Respondent No. 1, Inter alia, contended and substantiated the subsequent resolution passed by the third respondent on 7th December 2001. They submitted that, no error or Illegality as such has been committed in passing the subsequent resolution which is in pursuance of the Government Order and the Notification. The grounds urged by the petitioners are all baseless and contrary to the material available on record. Further, the learned Counsel appearing for the respondents has filed a detailed statement of objections stating that, the beneficiaries under the Scheme are identified after conducting a Grama Sabha and in pursuance of the decision taken

in the Grama Sabha regarding beneficiaries and in pursuance of the Notification issued by the Government, the matter is placed before the Committee and the Committee has taken a decision and identified as many as 535 persons as the beneficiaries throughout the constituency in different villages. The said identification is based on economic and social developments. Therefore, no error or illegality as such has been committed by the respondents in identifying the beneficiaries nor the petitioners have made out any good grounds to consider their prayer. Further the learned Counsel appearing for the respondents vehemently submitted that, the Writ Petitions filed by the petitioners are liable to be rejected for non-joinder of necessary parties. In pursuance of the impugned resolution passed by the competent authority identifying the beneficiaries, the petitioners have not impleaded the beneficiaries under the subsequent resolution, which is under challenge nor they are parties before the Court. Therefore, they submitted that, if any order is passed at this distance of time, with hearing the beneficiaries under the subsequent resolution which is under challenge, it largely affects the rights of such beneficiaries who are not before the Court and the petitioners have no vested right to demand allotment of houses as a matter of right and to pursue to implement the earlier resolution passed by the earlier Committee vide Annexure D. The earlier resolution has been superseded by a subsequent resolution and the earlier resolution can neither be considered nor given effect to. Therefore, they submitted that, the petitioners have not made out any good grounds to interfere in the impugned resolution passed by the competent authority and hence, the Writ Petitions filed by the petitioners are liable to be rejected.

6. Having heard the learned Counsel appearing for the petitioners, the learned Counsel appearing for respondents, after careful perusal of the material available on record, and the contentions urged by the learned Counsel appearing for the parties, after careful perusal of the impugned resolutions passed by the competent authority constituted by the Government in pursuance of the Notification, I do not find any error of law, as such committed by the authorities. Therefore, interference at this stage, that to, without impleading the beneficiaries who are identified after following due procedure and the Notification issued by the Government under the Scheme Introduced to the siteless/ houseless persons which is apparently belonging to economically and socially weaker sections of the Society, is totally uncalled for. It is significant to note that, the earlier resolution passed has been superseded by a subsequent resolution after assigning reasons. In pursuance of the complaint, sent by the Executive Officer, Zilla Panchayath, dated 23rd November 2001 and the circular issued by the Government dated 19th November 2001, the Government has taken a decision for cancellation of the earlier resolution passed by the Committee on the ground that, the said Committee without following the procedure and without following the guidelines issued by the Government for identifying the beneficiaries for allotment of house constructed under a special Scheme called "Rajiv Gandhi Ashraya Scheme" had passed the earlier resolution and the said resolution passed is annulled and a

new Committee has been constituted to go into the matter afresh in detail. The new Committee, in turn, by following the guidelines issued by the Government and after conducting the Grama Sabhas. In the respective villages, has identified 535 persons as the eligible beneficiaries. It is also significant to note that, the beneficiaries identified under the new Committee are not parties before the Court and they have also not been impleaded in these petitions. If any order is made against persons who are not parties in the petitions, the same would definitely affect their rights and the petitioners, knowing fully well, have intentionally and deliberately not impleaded the beneficiaries under the subsequent resolution. Merely making a bald statement on the ground that, the earlier resolution passed cannot be superseded by a subsequent resolution, would not suffice to grant the prayer sought for by the petitioners. The submission made by the learned Counsel appearing for the petitioners has no substance and the same is contrary to the material on record. As a matter of fact, the respondents 2 and 3 have filed a detailed statement of objection's, pointing out as to how the procedure has been followed and as to how they have identified the beneficiaries. They have also stated that, the said Scheme is only time bound and it should be implemented as otherwise, the sanction granted by the Government for implementation would lapse. Therefore, I do not find any error or illegality as such, committed by the respondents in passing the impugned resolution. Having regard to the facts and circumstances of the case, interference, at this stage, is totally uncalled for. Accordingly, the petitioners are not entitled to seek for any relief at the hands of this Court. Consequently, the prayers (i) and (ii) sought for by the petitioners are liable to be rejected.

7. Having regard to the facts and circumstances of the case, and taking into consideration the status of the petitioners that, they have also been identified by an earlier Committee on the basis of earlier resolution, I am of the view that, if there is lapse on the part of the Committee which recognised these petitioners as beneficiaries, the petitioners should not be deprived of the benefit, if they are otherwise found eligible.

8. Having regard to the facts and circumstances of the case, and taking into consideration the status of the petitioners and the background, it is just and proper to direct the third respondent to reconsider the request of the petitioners, if they are otherwise found eligible and if houses are available, the case of petitioners may also be considered and appropriate orders may be passed in accordance with law.

9. For the foregoing reasons, the Writ Petitions filed by the petitioners stand disposed of with the following directions:-

- 1) Petitioners herein are permitted to file necessary application to the third respondent within two weeks from the date of receipt of a copy of this order.
- 2) The third respondent, herein is directed to consider the request of the petitioners taking into consideration their economic and social background and

also the fact that, they have also been identified as beneficiaries by an earlier decision taken by the earlier Committee. If houses are available, the same may be considered in accordance with the guidelines issued by the Government, as expeditiously as possible within three months from the date of receipt of application from the petitioners.

10. With these observations, the Writ Petitions filed by the petitioners stand disposed of.