

(1997) 03 AP CK 0068

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7497 of 1989

Suramoni Balakistaiah and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 13-03-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1997) 4 ALT 53

Hon'ble Judges : Krishna Saran Shrivastav, J

Bench : Single Bench

Advocate : M. Narender Reddy, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision : Allowed

Judgement

Krishna Saran Shrivastav, J.—17 Petitioners in this Writ Petition under Article 226 of the Constitution of India seek issuance of Writ of Mandamus, quashing the cancellation order dated 03-05-1989 passed by the third respondent.

2. I cannot help repeating what Sri Justice M.P. Thakkar of the Apex Court (as then he was) has observed in the case of Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat, that:

"human goodness has limits - human depravity has none".

3. The petitioner No. 17 is a member of the Minority Community, while the remaining petitioners are members of the Weaker Sections of the Society. The respondents had acquired S. No. 260 situated in Koilakonda village for providing house sites to the backward classes. After acquisition, they divided the land in various house sites each admeasuring 150 sq. yds and issued patta certificates inter alia to the 17 petitioners and delivered possession of the same to them. The Respondents, then floated a group "Housing Scheme" in the Year 1983 and collected a sum of Rs. 311/- from each petitioner against the share capital. All the allottees had agreed in writing to contribute labour in the construction of the

houses, which was to be done under the supervision of A.P. State Housing Corporation Limited, Mahaboobnager District. The construction was entrusted to a Contractor, who completed the construction of houses in the Housing Colony and possession of the constructed houses were delivered inter alia to the petitioners on 15-08-1984. The petitioners and others did not occupy the houses and notices were issued to them to occupy the houses. When they did not occupy the houses, the third respondent after obtaining the approval of the second respondent on 03-05-1989 cancelled the patta certificates issued to the petitioners and the same were served on them by affixing it on their respective residences.

4. The petitioners alleged that the Contractor mixed a small quantity of cement in large quantity of sand and inferior bricks were utilized in the construction of the houses in question. Curing was not done and the construction was sub-standard. Even by the time the Housing Colony was inaugurated two houses had collapsed. In spite of bringing the inferior quality of work that was done by the Contractor, the respondents did not pay any heed to it. The roof of the houses were leaking and many other houses had collapsed. The houses were not fit for human habitation and therefore they did not occupy the houses. The order of cancellation of allotment of the houses is therefore, illegal.

5. The Respondent Nos. 2 and 3 through a joint counter have denied the allegations made in the Writ Petition. They have alleged that the petitioners did not cooperate in the construction of the houses by providing labour and doing curing of the houses. Because they did not occupy the houses in time, doors and window frames of about eight houses were removed, which resulted in collapse of these eight houses. The petitioners themselves did not occupy the constructed houses and due to their negligence damage has been done to the houses. They have complained about the inferior quality of material and sub-standard construction in the year 1987 ie., after three years from the date of completion of the construction of the houses. In spite of notices, the petitioners did not occupy the houses and therefore order of cancellation of allotment is valid and the Writ Petition is liable to be dismissed.

6. It is a matter on record that Sri P. Sridhar, Advocate was appointed as a Commissioner with the consent of the parties to the Writ Petition to do the spot inspection and to report about the actual condition of the houses in question. Sri P. Sridhar, Advocate Commissioner vide his report dated 17-02-1997 has intimated that the inspection was done on 28-12-1996 inter alia in the presence of Mandal Revenue Officer, Koyalakonda and Vice President of the Mandal and it was found that except house Nos. 16 and 17 all the houses have completely fallen down and only the basements erected are existing. The roof of the existing houses have cracks and the slab of the three houses was supported by wooden pillars and there is every likelihood that they will also fall. He also submitted along with his report the condition of all the houses separately.

7. Except three houses which are standing on the house sites in question which

are also in dilapidated condition, all the remaining houses have razed to the ground. It is the fact that speaks for itself. It can be safely inferred in the aforementioned circumstances that the construction of the houses was of a very poor quality and that is the reason why the houses have razed to the ground. It is not disputed before me that atleast eight of the constructed houses had fallen down in or about the year 1987 and two of them had fallen down even at the time of inauguration of the Housing Colony. When the condition of the houses was so alarming it is not thinkable that anybody would have occupied the same.

8. In the case of Charan Singh, etc. Vs. State of Punjab and others, etc., it is held that:

"It is now well settled policy of the Government as enjoyed under Article 46 of the Constitution and the Directive Principles, particularly Article 38 and 39(b) and the Preamble of the Constitution that economic and social justice requires to be done to the weaker sections of the Society"

9. In the case of Shiv Sagar Tiwari Vs. Union of India and others, it is held that:

"Life, livelihood and shelter are so mixed,. mingled and fused that it is difficult to separate them. To take away life, it would be enough to take away livelihood, and to earn livelihood, which in urban areas is ordinarily at places away from one's own home and hearth, shelter would be necessary be it a house or even a pavement"

10. It appears that in the light of the Constitutional objective of economic empowerment, the Government had taken the policy to allot house sites to the members of the weaker sections of the society, including the petitioners and had also floated a scheme for construction of the houses for them, but that scheme was not at all implemented properly. Instead of warning the contractor and keeping a watch on the construction, it appears that the respondents indirectly permitted the contractor to proceed with the inferior quality of work resulting in national loss. It would be apposite to mention that, to provide a shelter to a member of the weaker section does not mean to provide such a dilapidated house which, if occupied by him, may prove tomorrow to be his grave and, therefore, to put impediment by raising the plea that the petitioners were themselves responsible for the demolition of the houses is re-enacting "Merchant of Venice" of Shakespeare where Portia put the classical defence - "Not a drop of blood". An Executive Authority must not shoot of his mouth before he has floated his brain with reasons. There is felt need for judicial sanctity and professional accountability and procedural modality.

"A satisfied bureaucracy is as much necessary as good political leadership, to deliver the goods. The Government of free India have many promises to keep after its tryst with destiny on the midnight of August 14, 1947"

as observed in the case of Shiva Sagar Tiwari (3 supra).

11. For the foregoing reasons, the impugned order, whereby the order of

allotment of the houses has been cancelled, is quashed. However, the relief of directing the respondents to do repairs to the houses in question does not arise because they have now been demolished. The petitioners would be at liberty to construct their own houses, if they so desire, on the house sites which had been allotted to them. The respondents are also directed to pay Rs. 500/- each to the petitioners as costs of this writ petition.

12. The writ petition is thus allowed.

That Rule Nisi has been made absolute as above.

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