HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE D.V.S.S. SOMAYAJULU
HON'BLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY
and
HON'BLE MR. JUSTICE RAVI NATH TILHARI

I.A. Nos.1 and 2 of 2023 in W.P.No.15671 of 2023;

I.A.No.1 of 2023 in W.P.(PIL) No.96 of 2023;

and

I.A.No.4 of 2023 in W.P.No.10102 of 2023

I.A.No.1 of 2023 in W.P.No.15671 of 2023:

Neerukonda and Kuragallu Famers Welfare Association, A Society registered under the Societies Registration Act, Regd.No.47/2022, rep. by its Secretary, Sri Juraganti Sridhar Babu S/o Mohan Rao, Having its office at 444/1, Neerukonda, Mangalagiri Mandal, Guntur District and 11 others.

..Petitioners.

Versus

The State of Andhra Pradesh rep. by its Chief Secretary to Government, A.P. Secretariat, Velagapudi, Amaravati, Guntur District and 28 others.

..Respondents.

Counsel for Petitioners : Mr. Unnam Muralidhar Rao, Sr.Counsel
Mr. Unnam Sravan Kumar
Mr. Dammalapati Srinivas, Sr.Counsel
Mr.M.Lakshmi Narayana
Mr.Karumanchi Indraneel Babu

Counsel for respondents : Mr.Ponnavolu Sudhakar Reddy,
Addl. Advocate General
Mr. Kasa Jaganmohan Reddy
Standing counsel for APCRDA
Mr.P.Subhash, Government Pleader for Revenue
Government Pleader for MAUD
Government Pleader for General Administration.
Government Pleader for Finance & Planning.

COMMON ORDER

Dt:03.08.2023

With the consent of all the learned counsel, these Interlocutory Applications were taken up for hearing.

2. Sri Unnam Muralidhar Rao, learned senior counsel commenced the arguments in I.A.No.1 and 2 of 2023 in W.P.No.15671 of 2023. Sri Dammalapati Srinivas, learned senior counsel argued in I.A.No.1 of 2023 in W.P.(PIL) No.96 of 2023 and Sri Karumanchi Indraneel Babu, learned counsel argued in I.A.No.4 of 2023 in W.P.No.10102 of 2023 and in I.A.No.2 of 2023 in W.P.No.16871 of 2023. Sri Ponnavolu Sudhakar Reddy, learned Additional Advocate General argued for the State; Sri P. Subhash, learned Government Pleader for Revenue and Sri Kasa Jaganmohan Reddy, learned standing counsel for the APCRDA argued for the respondents.

3. The prayer in these Interlocutory Applications is for a direction to the respondents not to proceed with the construction of houses for the poor people in, what is now termed as, R5 zone of the capital city of Amaravati. The prayers made in all these Interlocutory Applications are the same with slight variations but in essence the petitioners seek an order against the construction of houses in the R5 Zone. The arguments of the learned counsels also proceeded on this basis.

4. Government of Andhra Pradesh issued G.O.Ms.No.45, dated 31.03.2023 by which the Commissioner CRDA was permitted to handover Ac.1134.58 cents of land to the District Collectors of Guntur and NTR Districts for the purpose of providing house sites to the beneficiaries of Economically Weaker Sections of the Society (E.W.S.). This is challenged.

5. The draft master plan of the capital city area of Amaravati has also been modified by publishing a Notification on 31.03.2023 in the Gazette. This is also challenged.

6. The Government has also amended certain sections of the Andhra Pradesh Metropolitan Region and Urban Development Authorities Act (for short “APMURDA Act”) by Act 13 of 2022,

which is also challenged in the writs filed. The actions taken pursuant to this Act are also challenged in the writ petitions.

7. The respondent – State Government is planning to construct houses for the Economically Weaker Sections of the Society in the plots allotted to the beneficiaries. These are challenged in the writ petitions and by Public Interest Litigations. Interim orders are sought against the proposed construction.

8. Sri Unnam Muralidhar Rao, learned Senior counsel argues that the capital city area was formed largely by entering into statutory agreements with the farmers under the Land Pooling Scheme (for short "the LPS") framed under the Andhra Pradesh Capital Region Development Authority Act, 2014 (for short "the APCRDA Act"). According to him the farmers surrendered the land and their livelihood based on the Government's promise that a developed city would come around their lands and they would be given plots in a fully developed city called 'Amaravati'. It is his contention that the agreements entered into between the farmers and the CRDA-State are statutory agreements, which cannot be varied or modified unilaterally by the respondents. He points out that the lands in the LPS area can

only be used for the benefit of the farmers and others in that area and that outsiders cannot be inducted into the lands. He seriously questions the action of the Government and states that the State is trying to induct outsiders from other districts into the capital. He points out that the farmers are partners in development and their rights have also been recognized by the Full Bench of this Court in the judgment known as 'Amaravati judgment' reported in ***Rajadhani Rythu Parirakshnana Samithi v. State of A.P.,*** [1]. He relies upon this judgment in its entirety and also stresses on paragraphs 223-241 to submit that a statutory contract is entered into and that the State is bound to fulfill the obligations. He also points out that the APCRDA was held to be under an obligation to complete the LPS and the development. He refers to paragraph No.267 for this. Ultimately he submits that in paragraph 514 the State and the CRDA were directed to discharge their duties under Schedule II and III of LPS. They were also directed not to alienate, mortgage or create any third party interest on the lands pooled, except for construction of capital city or development of the capital region. Learned counsel submits that contrary to these directions the

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[1] Manu/AP/0306/2022 = 2022 SCC OnLine AP 490

State has attempted to amend the Master Plan and its obligations. Relying upon the judgment reported in ***Jaya Thakur v. Union of India*[2],** he states that the mandamus granted cannot be taken away by legislation. It is also his contention that the land did not vest in the CRDA completely and that they could not also in turn transfer the same to the District Collectors. It is his contention that affordable housing is different from giving plots and construction houses for Economically Weaker Sections. It is also contended that the Directorate of Town and Country Planning is the appropriate authority for granting a layout or layout approval and that the State cannot unilaterally sanction a layout.

9. He points out that even in the SLP filed against the **Amaravati judgment (1 supra)**, the Hon'ble Supreme Court of India merely stayed the continuous mandamus directions (3 to 7), but directions 1 and 2 of the conclusions are still in force. It is, therefore, his contention that the allotment of the land for the Economically Weaker Section of the society and the constructions are both contrary to law and should be stayed.

[2] 2023 SCC OnLine SC 813

10. Sri Dammalapati Srinivas, learned Senior counsel argued in W.P.(PIL) No.96 of 2023. He also raises an issue about the vesting of the land and states that the vesting of the land in the CRDA itself has not been completed. Contrary to the same and contrary to the Amaravati Land Allotment Regulations, 2017 the land is proposed to be transferred to the District Collectors of the neighbouring districts and then allotted to third parties. He points out that if the applicant is a department of the State there is a specific procedure to be followed even for allotment of the land. Unless and until the price is collected in full, no allotment can be made. He points out that in this case the price has just been decided by the Government but the same has not been paid as warranted under the Rules. He points out that the total cost has been fixed at Rs.345.03 Crores. Even 50% of this price has not yet been paid. It is his contention that as per the relevant rules unless and until the sale consideration is paid in full and an agreement of sale is entered etc., a buyer cannot enter into the land for the purpose of erecting structure or structures thereof. He points out that the State has not followed the existing rules and has permitted both the allotment and construction without payment of price as per the

regulations. He contends that crores of rupees of public money is being spent. He points out that in an interim order that was passed in W.P.No.8331 of 2023 and Batch by a Division Bench of this Court, the Bench observed that the implementation of G.O.Ms.No.45 and consequent allotment of house sites shall be subject to outcome of the writ petitions. Against this order an SLP was filed in the Hon'ble Supreme Court of India in SLPs 9943 – 9945 of 2023 and Batch, wherein it was clearly held by the Hon'ble Supreme Court that issuance of patta will be subject to result of the final orders. Learned Senior counsel submits that despite this order, the State is going ahead and spending hundreds of crores of rupees in construction. If the writ petition goes against the State, hundreds of crores of rupees will be wasted. Learned Senior counsel, therefore, submits that this Court should prevent this from happening and should guard against the wasteful expenditure.

11. Sri Indraneel Babu, learned counsel also argues in line with what is stated by the learned Senior counsels. Each of them has supplemented the other while adopting the principal argument.

12. In reply, learned Additional Advocate General Sri Ponna Sudhakar Reddy submits that in the ***Amaravati Judgment (1 supra)*** Full Bench has issued a mandamus directing the State and the APCRDA to discharge their duties enshrined under schedule II and III of the Land Pooling Rules, 2015 (for short "2015 Rules"). The State was also directed not to alienate / mortgage or create any third party interest on the land pooled except for construction of a capital city or development of a capital region. Learned Additional Advocate General argues that only the subsequent directions issued by the Court were stayed by the Hon'ble Supreme Court of India but not these two primary directions. Therefore, he submits that the State is actually implementing the directions of the Court. He relies upon Section 53 of the APCRDA Act, 2014 to argue that as per Section 53 (1)(d) of APCRDA Act, 5% of the total area of the scheme is to be allotted for affordable housing for the poor. He contends that the first master plan which was passed by the CRDA then did not earmark any site for the Economically Weaker Sections. Later the same had been carved out to provide 5% of the site for the Economically Weaker Sections of the society. He also refers to Section 57(6) of the APCRDA Act to

argue that the affordable housing land can be reserved for affordable housing.

13. Relying upon the definition of the land pooling scheme he argues that as per Section 2(22) of APCRDA Act social housing for economically weaker sections of the society is also included in the Land Pooling Scheme. He also argues that the land is vested absolutely with the State Government and the CRDA on the publication of the final notification. He points out that this was also recognized by the Full Bench in the ***Amaravati judgment (1 supra).*** Therefore, he contends that the State is merely carrying forward its obligations under the APCRDA Act and as per the Full Bench decision. The State's intention is only to provide house sites for the poorer sections of the society. Relying upon G.O. learned Additional Advocate General contends that the first line of the G.O. itself shows the Government's commitment to provide housing for the poor. He contends that the heading of the G.O. is 'allotment of sites for housing purpose'. He points out that the Division Bench, before whom this G.O. was challenged in the first round of litigation, dismissed the Interlocutory Applications holding that the set of writ petitioners therein did not have direct involvement in the

area. Finally the interim relief was refused holding that the implementation of the G.O. and the consequent allotment of house sites shall be subject to the outcome of the writ petition. He points out that even the Hon'ble Supreme Court of India in SLP No.9954 – 9955 of 2023 clearly modified the order of the Division Bench by directing the State to include a condition that the patta, if any, issued will be subject to the orders of the Court in the writ petitions. Therefore, learned Additional Advocate General argued that once the house sites pastas are issued it is for the purpose of construction of the houses and as the same is in the knowledge of the Hon'ble Supreme Court of India and the Division Bench, this Court cannot pass any further orders in these applications restraining the construction.

14. Sri Kasa Jaganmohan Reddy also relies upon the counter affidavit that he has filed and argues that the scheme has been validly modified as per Section 87 of the APCRDA Act. He also contends that since the land was not allotted to the weaker sections of the society in the original master plan / scheme, the APCRDA varied the scheme in terms of Section 87. He also relies upon Section 43 (5) of APCRDA Act to argue that the

Government can always direct the CRDA to make an appropriate development scheme. It is his contention that since the house sites were not earmarked or provided to the Economically Weaker Sections in the capital area the modification of the scheme to create the R5 zone and to construct the houses is permissible and legally correct. He also relies upon the same sections that the learned Additional Advocate General refers to and argues that affordable housing is a part and parcel of the Act.

15. Sri P. Subhash, learned Government Pleader for Revenue also argues on similar lines and points out that the Government had issued directions to handover Ac.1402-58 cents of land to the Collectors of NTR and Guntur districts for construction of EWS houses under the Government scheme. Pending payment by the Revenue Department possession of the land was handed over to the District Collector and payment of 50% is expected. He points out that as the Financial Department has not yet provided the funding a letter dated 21.06.2023 was addressed to the 5th respondent seeking time to pay the money. The 5th Respondent Commissioner in turn informed the Special Chief Secretary that the period of payment is extended for 3 months

only. He also contends that the allotment was always subject to the conditions of BSO-21. He also filed a sample copy of the patta that is granted to contend that the condition as imposed by the Supreme Court has been incorporated in the patta.

COURT:-

16. Since this court is only hearing the Interlocutory Applications, this Court is not going very deep into the matters, although extensive submissions were made. This Court has to form a *prima facie* opinion and see if the ingredients for granting a stay are present or not.

17. It is a fact that the Full Bench of this High Court has heard a batch of writ petitions and has passed final orders on 03.03.2022 in what is now known as Amaravati Capital cases. This case is reported in ***Rajadhani Rythu Parirakshnana Samithi v. State of A.P., (Manu/AP/0306/2022 / Amaravati Judgment)***. Seven final directions were issued including a continuous mandamus. Directions 3 to 7 of this judgment were, however, stayed by the Hon'ble Supreme Court of India in SLP No.24371 of 2022. The two directions which are not stayed are the following :

1) "The State and APCRDA are directed to discharge their duties enshrined under Schedule II and III and Land Pooling Rules, 2015;
2) The State and APCRDA are directed not to alienate / mortgage or create any third party interest on the land pooled, except for the construction of capital city or development of capital region."

18. In addition to this, when G.O.Ms.No.45 was brought into force, a set of writ petitions were filed by a number of parties. They were heard by a Division Bench of this Court and a common order was passed in the Interlocutory Applications on 05.05.2023. The petitioners before the Division Bench were found to be not directly involved in the area reserved for what is called R-5 zone. This is one of the main grounds on which the applications were dismissed. After considering the merits of the matter the Division Bench finally concluded that since direction No.2 is not stayed by the Hon'ble Supreme Court of India and the construction of the Capital city and development of the capital region can continue, the Bench should not pass any interim order. In conclusion it was held that implementation of the G.O. and the consequent allotment of house sites to Economically Weaker Sections shall be subject to the outcome of the writ petitions.

19. Against the same SLP Nos.9943-9945 of 2023 were filed. In the course of its orders in these SLPs., the Hon'ble Supreme Court of India held as follows:

> "While so respondents have decided to give a good chunk of the land which is contained in what is described E-city [proposed Electronic city) for housing of Economic Weaker Section. This decision according to the petitioners involves trampling upon various provisions of law and will also involves frustrating the direction of the Full Bench of the High Court in matters which are pending consideration before this Court by way of special leave petitions.
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> After hearing the parties, we are of the view that we must modify the order(s) impugned and direct that if Patta is issued to cater to the EWS Housing Sector by the impugned Notification that it will be made clear that the Patta will be subject to the orders and the decision to be rendered in the writ petitions which have been filed.
>
> Accordingly, we direct that the Revenue Department of the respondent No.1- The State of Andhra Pradesh while issuing Patta, it will be made clear that the Patta will be subject to the result of the orders and decision to be rendered in the writ petitions pending in the High Court.
>
> It will also be made clear in the Patta that the persons to whom the Patta is granted under the EWS scheme and which is subject matter of the writ

> petitions will not be entitled to plead any special equity in case the verdict goes against them.
>
> The special leave petitions are disposed of accordingly.”

20. Consequently, the house site pattas were issued. A copy of the patta filed shows that condition No.10 has been included / incorporated in the patta stating that further action on this patta will be subject to further directions in the cases pending before the High Court and the Hon’ble Supreme Court of India. The phrase used in this is “తదుపరి చర్య” (further action). The translated copy filed also states as follows — ‘further action on this matter will be taken in accordance with final orders pending before the High Court / Supreme Court’.

21. The contract entered into by the farmers with the APCRDA for surrendering their land is pursuant to the provisions of the APCRDA Act 2014, the Land Pooling Rules, 2015 and the Amaravati Land Allotment Rules, 2017. The Act provided for creation of the capital city by a Land Pooling Scheme which is defined in Section 2 (22) of the APCRDA Act. Small parcels of land were handed over by the owners/farmers to be converted into large land parcels which would in turn be developed with

infrastructure etc. The farmers / owners would in turn get a reconstituted plot after deducting the land for public purposes, playgrounds, social housing for economically weaker sections etc.

22. This scheme of development was in vogue since 2014-15. After the last elections it is submitted that it was felt by the incumbent Government that since land was not at all earmarked/allotted for the weaker sections, the master plan etc., should be modified to allot some land to poorer sections. This led to the amendments to the Act, the rules, the G.Os., etc., which are now under challenge. The State wishes to allot plots / construct houses for people from outside the area / from neighbouring districts in the "R-5 Zone" (EWS Houses).

23. Both the parties are at issue on the questions whether the power is there to allot land to the EWS houses; whether the proper procedures etc., were followed; whether the modifications made by the Government in power are in accordance with law; and whether the land absolutely vested in the APCRDA in the circumstances of this case and in view of the LPS Rules. The writs filed are challenging the amendment to the Act and the G.Os., issued.

24. The respondents state that as per the Section 53; 5% of the area may be kept aside for providing “affordable housing for the poor”. The respondents contend that if a final Notification is issued under Section 57(2) of the APCRDA Act the land shall vest absolutely with the State Government and Authority and they can allot it for the Economically Weaker Section housing. According to the writ petitioners, final vesting is yet to take place. There is a serious debate on this issue at this stage itself. Relying upon the finding in the Full Bench Judgment that the final Notification is issued, the State is contending that the land has vested. The State relies on Section 57(2) to argue that the land vests absolutely. This is denied by the Writ petitioners. The petitioners in W.P.No.15671 of 2023 have also filed a note showing that the scheme is not complete in all respects and that final vesting will only take place as per Section 59 read with Rule 11, 12 and 13 of the 2015 Rules. The note shows that certain aspects are still to be fulfilled. Case law is also cited to the effect that “vesting” acquires meaning depending on the situation and context. So whether the ‘vesting’ is ‘resting in title’ or vesting in possession etc., is an issue that requires a further investigation. The word “vesting” is also a word of

slippery import (***Maharaj Singh v. State of U.P.,***[3] and ***National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad***[4]***).***

25. This apart this Court also notices that the State and the APCRDA were directed to discharge their functions under Schedule II and III of the Land Pooling Rules, 2015 by the Full Bench of this court. This is relied on by the respondents to contend that they are following the said directions only. As per them the development of the capital city includes the actions taken to allot the sites and construction of houses for the poor.

26. The Schedule–II of the LPS Rules 2015 talks of the responsibility of the Authority towards the land owners, others residing within the area under LPS etc. Schedule-III talks of the role and responsibility of the Government.

27. Schedule II (ii) dealing with development of area under LPS talks of - allotting "prescribed built up space" / "dwelling units" for economically weaker sections. Schedule III (ii) deals with the responsibility of the Government towards - others residing within the area under LPS. Schedule III (ii) (d) says that the State can provide housing to houseless, as well as those who

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[3] (1977) 1 SCC 155
[4] (2011) 12 SCC 695

losing houses in the course of the development. In the *prima facie* opinion of this Court this responsibility of the Government would be towards "others residing within the area under the LPS". In addition housing to those "losing houses" in the course of development is also permissible. Whether this would permit the State to allot the lands to people from outside the district and outside the LPS as is being done now is a debatable issue. In the *prima facie* opinion of the Court these schedules and clauses will apply to those "others" residing in the area covered by LPS and to landowners under the LPS.

28. The APCRDA Act was amended by Act 13 of 2022 to add the following explanation and proviso [Section 53 (1)(d)]:

> "Explanation-The phrase affordable housing for the poor includes any scheme of Government or Union of India to provide house sites for construction of houses thereon and shall be so construed wherever occurring under the Act, Rules and regulations framed thereunder:
>
> Provided that all the citizens of the State would be entitled to be beneficiaries of the scheme for affordable housing in the capital city subject to eligibility and the same shall not restricted to the villagers covered by capital city or capital region area."

29. This amendment Act is the subject matter of challenge too. It is thus clear that the pre-amended Act and scheme as they

stood applied to people in the area under LPS and to "affordable housing" but did not include allotment of house sites. The schemes/rules etc., only envisaged affordable housing; allotting prescribed built up space / dwelling units to EWS and not "house sites" *per se*. The explanation introduced recently states affordable housing includes house sites also. The proviso opens up the house site to all the citizens of the State. This is under legal challenge. This is also to be tested against the findings of the ***Amaravati judgment (1 supra)*** wherein the rights of land losers / farmers were recognized. The taking away of a vested right by legislation, when it affects / violates Article 14 or any other constitutional provision also has to be examined deeply. [***Virender Singh Hooda v. State of Haryana***[5] and ***Madan Mohan Pathak v. Union of India***[6]***].***

30. In addition, the Amaravati Land Allotment Rules, 2017 (for short "2017 Rules") were also brought into force in 2017. These rules as per Rule 1 shall apply to the lands acquired by, vested in or belonging to APCRDA. These rules are enacted for the purpose of "allotment" of the land by the authority. These rules permitted the authority to frame appropriate regulations

[5] (2004)12 SCC 588
[6] (1978) 2 SCC 50

for allotment of the land. Rule 5.4 of the 2017 Rules provided for a public notice to be issued about the land to be allotted. The payment terms etc., are prescribed in Clause-6. The allottee of the land shall pay the sale price as per Rule 6.2 of the 2017 Rules. There are restrictions on the allottee transferring the plot (Rule 8.4 to 8.4.3). The transferee should also meet the original eligibility criteria.

31. The Amaravati Land Allotment Regulations 2017 (for short "the 2017 Regulations") were notified on 20.06.2017. Clauses 6.1 of 2017 Regulations permits the allocation/allotment of land as freehold or under a lease. Clause 6.5 of the 2017 Regulations permits the authority to allot plots on application or by nomination where the applicant is a Department of the State Government or the local self Government. Randomized selection is possible where the land is to be allotted for affordable housing, EWS housing (Clause 6.6.1.1). The sale consideration should be paid as stipulated in Clause 7.12 of the 2017 Regulations. The 1st installment should be paid within 45 days (Clause 7.1.2.1). The 2nd installment should be paid within 75 days (Clause 7.1.2.2). Clause 7.13 states that the Commissioner can extend the period to a maximum of 3

months. In fact, this sub clause 7.13 is referred to in the last letter dated 23.06.2023 by the Commissioner for extending the time for payment.

32. Clause 7.2.1 of the 2017 Regulations states that on payment of the full premium, the authority shall call upon the intending buyer to execute an agreement in the form prescribed within a period of 30 days, from such call and the intending buyer shall execute the agreement with the authority, whereupon the authority shall permit the intending buyer to enter upon the land for erecting the structure or structures thereon. The consequences arising from the failure to pay are also set out later. It is urged by the learned counsel for the petitioner in W.P. (PIL) No.96 of 2023 that these very regulations are being flouted by the State. It is pointed out that the cost of the land as determined by the letter, dated 15.05.2023, is Rs.345.03 crores, and not even one rupee has been paid upto to 23.06.2023 and further time extension has been granted.

33. Clause 7.2.1 of the Regulations is as follows:

> "7.2.1 On the payment of full lease premium, the authority shall to execute an Agreement to Lease or Agreement for Sale in the format upon the intending lessee or intending Buyer as the case may be, prescribed by the Authority within a period of thirty (30) days from such call. The Intending Lessee or the

> Intending Buyer shall execute with the Authority such Agreement to Lease or Agreement for Sale, as the case may be, whereupon the Authority shall permit the Intending Lessee or the Intending Buyer by Permit, to enter upon the land for the purpose of erecting the structure or structures there on."

34. The use of word "whereupon" clearly indicates the intention that payment and execution of the agreement are pre-conditions for erection of structures. Entry into the site is permissible by anyone for erecting structures only after payment of full price and the execution of the agreement.

35. The construction can only commence after the above, as per the ZONING PLAN and after the approvals of the authority are obtained by payment of the necessary fees etc., (Regulation 7.6.2). There are no visible exceptions in the Rules even if the Revenue department is the applicant. All the parties are conscious of the regulations as is visible from the correspondence for the payment of the consideration, the request for extension of time etc.

36. It is clear that even 50% of the price is not paid till date. Proof of approvals are also not filed, yet steps are being taken for construction. In the opinion of this Court, this is a very seriously triable issue. *Prima facie* Court is of the opinion that

the action taken being taken for construction of houses without payment / without an agreement / without permission is contrary to the existing Rules/Regulations.

37. Another submission of the respondents is that any order passed in these applications would be contrary to the order of the Hon'ble Supreme Court in the SLPs., and that the allotment of the sites has been made subject to final order in the Writ Petition. In the opinion of this Court the issue before the Division Bench in W.P.No.8331 of 2023 and Batch was about the allotment of the site for the EWS. In paragraph 14 the Division Bench clearly held that the petitioners do not have direct involvement in the area now sought to be allotted to the house sites to the EWS. It was further held that the petitioners do not have any right of allotment of a developed plot in the area earmarked for electronic city. They would not be directly affected if the subject allotment is made by the State Government. In conclusion in paragraph 15 the Bench held that the Interlocutory Applications are dismissed. However, it was observed that "implementation of the G.O. and the consequent allotment of sites to EWS shall be subject to the outcome of these writ petitions". In the special Leave Petitions

No.9954-9955 of 2023 the Supreme Court clearly discussed about the allotment of a chunk of the land which is contained in the e-city, which was proposed for housing of EWS. After hearing the learned counsels the Hon'ble Supreme Court held that if a patta is issued to cater to the EWS housing scheme by the impugned notification it had to be made clear that the patta will be subject to the orders in the writ petitions. It was also clarified that the "persons" to whom the "patta has been granted" under the scheme will not be entitled to plead any special equities. In the humble opinion of this Court both the Division Bench and the Hon'ble Supreme Court of India were only dealing with the issue of allotment of house site pattas to the EWS. It cannot be said that by virtue of this order the Hon'ble Supreme Court of India permitted the State to construct the houses or make the construction also subject to the final result. The issue before the Hon'ble Supreme Court, in this Court's opinion, was about the allotment of a large parcel of land and the grant of pattas. The order did not discuss anything explicitly about the construction of houses etc., or the cost implications including the loss that may occur.

38. A fact which has been brought to the notice of this Court was that initially the construction of the houses under the scheme was to be funded in part by the Central Government also. In view of the pending litigation it is stated that the Central Government has not agreed to give its share of the money for construction of houses. The State Government, however, is proposing to go ahead with the construction from out of its own funds. An argument that was vehemently advanced is that as the allotment of the land itself is subject to the result of the outcome of the writ petition, further expenditure of the money for the purpose of construction of the hoses should not be permitted because if the writ petitioners succeed and the State loses the case, there would be huge wastage of public money.

39. The total project cost is Rs.1081-39 crores for the construction of 47,017 houses at a unit cost of Rs.2,30,000/- per house. This is as per G.O.Ms.No.1. The said G.O. itself said that the total central share and the State share will be borne by the State Government in case the "pending case" is not disposed of during the mission period. Thus, it is patent and clear as of now that –

(a) the cost of the land which has to be paid by the State Government to the APCRDA is Rs.345.03 crores,

(b) the cost of the buildings as per the G.O.Ms.No.1 is Rs.1,081-39 crores. The total expenditure, therefore, is approximately Rs.1,426-42 crores as of now. It is proposed to be borne by the State Government in case the "pending case" is not disposed off.

40. The question is should this Court at this stage permit the construction to go ahead? The allotment of the land and creation of R-5 Zone are subject to the result of the writ petitions mentioned above. The larger issues of the farmer's rights under the Land Pooling Scheme and the power of the State to amend the Master Plan etc., are also subject to litigation. The ***Amaravati judgment (1 supra)*** discussed the farmers' rights and gave directions. Whether this allotment of the house site will affect the farmers, who surrendered their lands under LPS, will depend on the judgment of the Hon'ble Supreme Court of India in the SLPs against the ***Amaravati Judgment***. The State also incorporated Clause-10 in the pattas issued to the allottees, which clearly stated that further action / process will be taken up in accordance with the final orders in

the cases pending before the High Court / Hon'ble Supreme Court of India. This indicates that even the construction activity will be taken up after litigation is cleared before the High Court and the Hon'ble Supreme Court of India. This Court cannot be a silent spectator if taxpayers' money is likely to be caught up in the litigation. In the Full Bench judgment itself a comment is made about the hundreds of crores of money that was spent in the capital area in the form of building infrastructure etc., which is not being used. To permit further construction by utilizing the taxpayers money, when the entire issue is pending before the superior courts, is a factor which is weighing heavily with this Court.

41. In the course of the ***Amaravati judgment (1 supra)*** also the Full Bench had an opportunity to consider the issue of public funds being spent and also wastage of public funds. The issue of doctrine of public trust was considered in the judgment starting from para 295. The question of constitutional morality, constitutional trust etc., were also discussed. It was clearly held that the State is bound to account for each and every paise of public money spent on various developmental activities based on the doctrine of public trust. It is also noticed in the said

judgment at para 337 that by that date the land pooling is completed, the notification is issued. But in the subsequent paragraphs the further action to be taken under Section 59 of the APCDRA Act and the Rules, including Rules 11 to 15 of the LPS Rules, 2015 were discussed. The conclusion on this aspect is at paragraph 342, wherein the Full Bench held that the APCRDA and the State did not comply with the Rules 12 to 14 till date i.e., till 2022. Thereafter, noticing the inaction of the State it was held in paragraph 348 that the State or the APCRDA cannot abandon the partly completed projects, development and infrastructure in the capital city on the ground of financial difficulties or any other ground.

42. An issue that arises as a corollary to this is whether the current action of the State could be said to be in pursuance to the directions of this Court, more particularly directions 1 and 2. This is the submission of the learned Additional Advocate General. It is the case of the writ petitioners that while abandoning all other activities in the capital area, including developmental activities in line with the direction 1 and 2, only housing in one particular zone viz., R5 alone is being taken up,

ignoring the overall development of the capital city. This also appears to be *prima facie* true.

43. It is also pointed out that there are economically weaker people in the land losers also. This was noticed in the ***Amaravati judgment*** also. In paragraph 448 of the reported judgment from Manupatra, the Bench already noted that the staggering majority of the farmers in these cases are small and marginal farmers, who are not highly educated.

44. In view of the law on the subject including ***Amaravati Judgment*** this Court is of the view that it cannot be a silent spectator at this stage. The allotment has already been made and it is subject to the result of the writ petition. Further expenditure, in the *prima facie* opinion of this Court, is not really warranted. It can lead to a loss of at least Rs.1500 – 2000 cores for the State. As per the Hon'ble Supreme Court of India's directions the patta holder cannot seek equities but the question is about the huge sum of money proposed to be spent. If this is lost – who will be responsible? This is another factor weighing heavily on this Court's mind.

45. In view of all of the above this Court *prima facie* finds that–

(a) In the *prima facie* opinion of this Court, the Act as it initially stood talked of affordable housing for land losers and others "in the LPS scheme". Therefore, the question of inducting people from outside the district is a debatable issue;

(b) The amendments to the Act 13 of 2022, by which affordable housing (as it stood in the original Act), is now said to include affordable house "plots" also is the subject matter of judicial challenge.

(d) The Schedule II and III of the LPS Rules and the Land Allotment Regulations are not followed by the APCRDA in the allotment of the land to the revenue department. In the absence of payment of full sale price as per the said rules, in the *prima facie* opinion of this Court, the transfer of land cannot be completed and further construction cannot be allowed. No proof is filed to show that the requisite statutory approvals etc., are either obtained or waived for the construction according to the zoning regulations etc. No proof is filed to show that the final LPS has been implemented and the authority has

taken over the land reserved for social amenities and affordable housing etc., and the necessary entries are made in a separate register (Rule 12 of 2015 Rules).

(e) Apart from all the above, this court finds that enormous amount of the public funds are now proposed to be spent in a matter which is admittedly subject to final outcome of the writ petitions/SLPs. This Court cannot be a mute spectator if public monies are spent and later they cannot be recouped. This is public money.

(f) The legal issue of a "mandamus" being taken away by legislative action is also a factor that is weighing with the Court (as per the judgments of the Hon'ble Supreme Court of India).

(g) Right to life /livelihood of farmers is involved in these matters. The same was noticed in ***Amaravati Judgment***.

(h) The patta issued itself says that further action will be taken in accordance with the final orders pending before the High Court / Supreme Court (Condition No.10). This condition is introduced / incorporated after the orders of the Hon'ble Supreme Court of India in SLP

Nos.9943-9945 of 2023. In the opinion of this Court this indicates that the State was conscious of the fact that construction in the house site can only be after final orders. The learned Additional Advocate General tried to justify it as poor "drafting" by the draftsman. In this Court's *prima facie* opinion this clause as it is incorporated also refers to further activities after final orders by the High Court / Hon'ble Supreme Court of India only. The explanation offered – poor draftsmanship does not impress this Court.

46. These are all seriously debatable issues which require a full-fledged hearing. If the construction is completed it will be a fait accompli. The loss will be irreparable; Balance of convenience is in favour of maintaining the *status quo* with respect to the houses also till the final judicial orders are passed. The rights of the land losers / farmers; the implications of the ***Amaravati judgment*** on the farmers / the Capital City / the development; the right of the State to alter the plans / schemes etc., are all inextricably linked up. In the opinion of this Court it is in everybody's interest to maintain the *status quo*

with respect to the houses construction in R-5 zone till a finality is reached in the litigation.

47. For the above mentioned reasons this Court holds that permitting the further construction will not be proper or justifiable in the circumstances. In that view of the matter, this Court is of the opinion that the larger public interest is against the construction of the houses for now in R-5 Zone.

48. Depending on the further orders passed by the Courts, including the Hon'ble Supreme Court of India, further steps can be taken, but for now there shall be an interim stay of construction of the houses in R-5 Zone. These Interlocutory Applications are, therefore, allowed.

49. The opinions expressed in the course of this order and the *prima facie* conclusions are for disposal of these Interlocutory Applications only. They shall not be treated as an opinion on the merits of the matter. No costs.

D.V.S.S. SOMAYAJULU, J

CHEEKATI MANAVENDRANATH ROY, J

RAVI NATH TILHARI, J

SSV