

# THE HIGH COURT OF MEGHALAYA

## PIL No.7/2012

Smti. Agnes Kharshiing,  
President, Civil Society Women's Organisation,  
Bomfyle Road behind St. Mary' Convent,  
Laitumkhrah, Shillong-3. :::: Petitioner

-Vs-

1. The State of Meghalaya,  
represented by its Chief Secretary to the  
Govt. of Meghalaya, Shillong-793001.

2. The Commissioner & Secretary,  
Urban Affairs Department, Shillong-793001.

3. The Commissioner & Secretary,  
Revenue Department, Shillong-793001.

4. The Meghalaya Urban Development Authority,  
Shillong-793001.

5. The Joint Secretary,  
Revenue & Disaster Management Department,  
Shillong-793001.

6. The Deputy Commissioner,  
East Khasi Hills District, Shillong-793001.

7. The Civil Services Officers Housing Cooperative  
Society Limited, Nambli, P.O. Madanriting,  
Shillong. :::: Respondents.

**BEFORE**  
**THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**  
**THE HON'BLE MR. JUSTICE S R SEN**

For the Petitioner : In person

For the Respondents: Mr. BP Todi, Addl. Advocate General,  
Mr. KP Bhattacharjee, GA for respdt.1,2,3,5 & 6  
Mr. SP Mahanta, Adv for respdt.No.4  
Mr. HS Thangkhiew, Sr. Adv,  
Mr. N Mozika, Adv for respdt. No.7

Date of hearing : **07.07.2014**

Date of Judgment & Order : **23.07.2014**

## JUDGMENT AND ORDER

**(Justice T. Nandakumar Singh)**

By this PIL, the petitioner is challenging the policy decision of the Govt. of Meghalaya, for public welfare which directly or indirectly improves the living standards of not only Civil Officers working under the Govt. of Meghalaya but also the residents of New Shillong Township and also neighbouring areas of New Shillong Township (for short 'NST') in issuing the allotment order dated 18.08.2008 for allotting a plot of land measuring 45.01 acres in the NST in favour of the respondent No.7 i.e. the Civil Services Officers Housing Cooperative Society Limited. The questions call for consideration in the present PIL are **(i)** whether the allotment of land to the respondent No.7 under the policy decision of the Govt. of Meghalaya for public welfare is within realm of public purpose? **(ii)** what is the scope of judicial review for interference if the scheme comes within the realm of public purpose? and; **(iii)** is the judicial interference permissible when the action of the State Govt. for distribution of State largesse for the public welfare come within the realm of public purpose?

**2.** Heard petitioner in person as well as Mr. BP Todi, learned Addl. Advocate General, Meghalaya assisted by Mr. KP Bhattacharjee, learned GA appearing for the respondents No.1,2,3,5 & 6, Mr. SP Mahanta, learned counsel for the respondent No.4 and Mr. HS Thangkhiew, learned senior counsel assisted by Mr. N Mozika, learned counsel appearing for the respondent No.7.

3. **Factual Background:-** The petitioner is the President of the Civil Society Women's Organization (in short 'CSWO'), an N.G.O. having its office at Shillong and registered under the Society Registration Act. Out of the many objects of the CSWO, one is to help women find a voice that would be able to advocate people, create profound policies and alter actions of the State which are not in conformity with the rules laid down as per law. The Govt. of Meghalaya, Urban Affairs Department had acquired 370.26 hectares or 914.54 acres as on 12.03.2007 for NST for provision of infrastructure, housing, institutional, administrative and recreational uses. Priority is to be given for administrative uses of the State Govt. departments and for providing amenities and services. The petitioner came to know on reading the newspaper sometime in the months of February/March, 2012 about allotment of land in favour of the respondent No.7 in the NST acquired by the Govt. of Meghalaya for public purposes. The petitioner being a social worker and RTI activist was inquisitive to go on details of the news of the allotment of land in favour of the respondent No.7 and for correct information, the petitioner filed an RTI application dated 26.03.2012 before the Public Information Officer, Urban Affairs Department, Shillong regarding acquisition of land for NST at Mawdiangdiang and the surrounding areas. The informations demanded by the petitioner under the said RTI application dated 26.03.2012 are:

- (i) Total area of land acquired as on date for New Shillong Township.
- (ii) Complete list of Departments and Organizations (central and state), Societies, NGOs, individual etc. who have been allotted land by Government in New Shillong Township.
- (iii) Photocopies of file notings starting with the receipt of the application from the Secretary of the RESPONDENT NO.7, Civil Services Officers Housing Co-operative Society Ltd. (RESPONDENT NO.7), Meghalaya, for allotment of land at new shillong township leading decision to allot the land.

- (iv) Copy of the Cabinet's decision dated 9 August 2007 which authorizes the allotment of land to the RESPONDENT NO.7.
- (v) Copy of Revenue Department Memorandum No.RDS/79/86/35 (a) dated June, 1989.
- (vi) Copy of the Revenue Department letter No.RDS.37/88/144 dated 22 May 1992.
- (vii) Copy of Chief Secretary's decision taken in March 2010 that member of RESPONDENT NO.7 would be given plots of up to 10,000 sq.ft.
- (viii) Copy of letter of Principal Secretary, Urban Affairs Govt. of Meghalaya replying to Audit in November 2010 and his contention for the allotment of land to the Respondent No.7.
- (ix) How much has been paid to the land owners for the land acquired for New Shillong Township.
- (x) How was payment made to the land owners and the name of all the land owners who received the payment for their land acquired for the New Shillong Township, and how much was each owner paid.
- (xi) If paid by cheque, please give details of cheque No. date and amount and the name of the person in whom the cheque was made.
- (xii) Which account was debited for the payments made for the land acquired for the New Shillong Township.

**4.** In response of the aforesaid application under RTI, the Deputy Secretary to the Govt. of Meghalay, Urban Affairs Department under this letter No.UAU.143/2007/145 dated 23.04.2012 furnished information regarding above queries on 3 (c) (i) and (ii). It was further stated that regarding information on 3 (c) (iv) (v) (vi) (vii), the same has been transferred to the Revenue Disaster Management for providing the required information. It was further stated that regarding 3 (c) (ix) (x) (xi) (xii), it had been transferred to Public Information Officer and Additional Deputy Commissioner (Revenue) East Khasi Hills District, Shillong for providing information as the payment to land owner and Power of Attorney holder was made by the office of the Deputy Commissioner. Further, with regard to information regarding 3

(c) (iii) and (iv) as the petitioner desired to inspect first before taking copies, the petitioner was called upon to inspect the documents on any day during office hours.

5. The Office of the Principal Accountant General (Audit), Shillong vide letter No.ADMN/Audit/12-40/2012-13/537 dated 11.05.2012 forwarded a copy of the letter dated 01.05.2012 alongwith its enclosure received from the Joint Registrar of Co-operative Society and Public Information Officer's (PIO) to the petitioners. Vide said letter dated 01.05.2012 of the Joint Registrar of Co-operative Society regarding the names of all the members of the respondent No.7 was furnished to the Principal Accountant General (Audit). In the month of January, 2009, the Govt. of Meghalaya notified the constitution of a Land Allotment Committee for NST to examine the proposal for allotment of land received from various departments/organizations and after examining the merits of each case, Committee will approve the allotment of land and the size of the plot to be allotted in each case and location of such plots. Prior to the constitution of the said Committee, land acquired by the Govt. in the NST was allotted by the Minister In-charge of Urban Affairs Department based on the recommendation of its department. As of October, 2010, out of 370.26 hectares acquired by the Govt. in the NST, 300.74 acres i.e. 121.71 hectares had been allotted to various entities as under:

Sl. No.	Land allotted to	Land handed over on	Area handed over (in acres)	Purpose for which land allotted
1.	Tourism Department, GOM	16.10.2003	20.00	Construction of the institute of Hotel Management, Shillong.
2.	Police Department, GOM	04.02.2004	03.00	For departmental works.
3.	Civil Defence and Home Guards Directorate (?), GOM	26.02.2004	10.00	For departmental works.
4.	Meghalaya Administrative Training Institute, GOM	13.07.2006	05.00	Construction of Administrative Training Institute.

5.	Directorate of Health Services, GOM	24.10.2007	02.60	Construction of nursing Institute, Shillong.
6.	Directorate of Health Services, GOM	06.06.2008	22.00	Setting up of the Public Health Foundation of India Institute, Shillong.
7.	Directorate of Higher and Technical Education, GOM	29.10.2008	120.00	Setting up of the Rajiv Gandhi Indian Institute of Management, Shillong.
8.	Civil Services Officers Housing Co-operative Society Ltd., Shillong	20.05.2009	45.01	Land for residences of members of the society.
9.	Directorate of Higher and Technical Education, GOM	08.12.2009	50.00	Setting up of the English and Foreign Languages University, Regional Campus, Shillong.
10.	Directorate of Higher and Technical Education, GOM	08.12.2009	03.00	Setting up of Central Institute of Hindi, Regional Centre, Shillong.
11.	Directorate of Sericulture and Weaving, GOM	11.03.2010	20.13	Setting up of National Institute of Fashion Technology, Shillong.
		Total	300.74	

6. Before constitution of the said Land Allotment Committee under the said GOM i.e. January, 2009, the land acquired by the Govt. in NST was allotted by the Minister In-charge of Urban Affairs Department. The cabinet of the Govt. of Meghalaya, took a decision on 09.08.2007 that “the cabinet directed the Revenue Department to examine the feasibility of allotment of land to the professional, bureaucrats etc. who could contribute to the development of the State.” The approval of the Minister In-charge Urban Affairs Department to allot the land was based on the view of the Revenue Department (May, 2008) that allotment of land to the Civil Service Officers would be in line with the said decision of the cabinet dated 09.08.2007. In pursuance of the said cabinet decision dated 09.08.2007, the Minister In-charge Urban Affairs Department based on the view of the Revenue Department, approved the allotment of 45.01 acres of land in the NST to the respondent No.7; accordingly, the Joint Secretary to the Govt. of Meghalaya, Urban Affairs Department under her letter dated 18.08.2008 issued the allotment/letter/order for allotting 45.01 acres of land at Rs.19,60,636/- (Rupees nineteen lakhs sixty thousand six hundred thirty six) only and the annual land revenue is fixed at Rs.494/- per hectare. It is the further case of

the petitioner in the writ petition that the respondent No.7 should have been charged the cost of the land, according to the petitioner, amounting to Rs.58,81,918/- (Rupees fifty eight lakhs eighty one thousand nine hundred eighteen) only instead of one time premium of Rs.19,60,636/- (Rupees nineteen lakhs sixty thousand six hundred thirty six) only which in effect works out to Rs.1/- per sq.ft. Further, considering the tremendous increase in land prices in Shillong and its surrounding over the years, particularly, in the NST area and its vicinity, the respondent No.7, should also have been charged an additional premium in line with the decision of the Land Allotment Committee (for short 'LAC'). The failure of the Urban Affairs Department to implement the LAC's decision resulted in land being allotted to the respondent No.7 at a cheap rate resulting in loss of Rs.39,21,282/- (Rupees thirty nine lakhs twenty one thousand two hundred eighty two) only to the public exchequer.

7. In December, 2006, the Commissioner & Secretary, Urban Affairs Department wrote a letter to the Secretary of the respondent No.7 conveying the decision of the Govt. that the plot of land for each member of the respondent No.7 should not exceed 300 sq.mtrs i.e. 3229 sq.ft. It is the further case of the petitioner that even assuming that the respondent No.7 would have full membership of 50 persons (as per papers filed by the respondent No.7 with the Assistant Registrar of Co-operative Society, the respondent No.7 had 42 persons as on 31.03.2010), the respondent No.7 should have been thus allotted 1,61,450 sq.ft. of land. Even allowing that 25% of such land i.e. 4,90,159 sq.ft. would be utilized for common facilities like internal roads, drainage etc. the size of each plot of the 50 members of the respondent No.7 works out to 29,409,54 sq.ft. i.e. 811% more than what the Urban Affairs Department had stipulated for each member. The Comptroller and Auditor General (CAG), India in its report for the year 2011

stated that there has been unauthorized allotment of land to the respondent No.7 as well as incorrect fixation of premium at a lower rate resulted in undue financial benefit of Rs.78.42 lakhs to the respondent No.7. The Urban Affairs Department, which was the nodal agency for the NST project, in August, 2008 conveyed to the respondent No.7-Society, Govt. approval to allot 45.01 acres of land on 99 years lease on payment of one time premium of Rs.19.61 lakhs and the annual land revenue at Rs.494/- per hectare as fixed by the Deputy Commissioner, East Khasi Hills District. It is the further case of the petitioner that the allotment of land to the respondent No.7 is not for public purpose and also the allotment of the said land to the respondent No.7 at a cheap rate resulting in loss of Rs.39,21,282/- (Rupees thirty nine lakhs twenty one thousand two hundred eighty two) only to the public exchequer.

**8.** It is the further case of the petitioner that the transfer of land to the respondent No.7 through a lease is impressible under the Meghalaya Transfer of Land (Regulation) Act, 1971 (for short 'the said Act of 1971'). Section 3 of the said Act of 1971 prohibits the transfer of land in Meghalaya by a tribal to a non-tribal or by a non-tribal to another non-tribal except with the previous sanction of the competent authority. Section 2(d) of the said Act of 1971 defines 'transfer' of land to mean as "the conveyance of land of one person to another and includes gift, sale, exchange, mortgage, lease, surrender or any other mode of transfer". Hence, the lease of Govt. land in NST to the respondent No.7 is also a 'transfer' of land. Lease by the Govt. to the respondent No.7 is not justified in law as because there is no exception or provision in the Act that the Govt. can acquire land and give to a non-tribal. A society is an artificial/juridical/juristic person. Hence, it cannot be classified as tribal. The petitioner further stated that there is no doubt that the authority exercised its power conferred on them by law in bad faith and for collateral purpose. Some of the members of the respondent No. 7 were file



pushers in allotting the said land in favour of the respondent No.7 by violating the public purposes of Land Acquisition Act. In the present PIL, the prayers sought for are:

- (i) for issuing a writ in the nature of mandamus and/or any other appropriate writ, direction, or order of the like nature to investigate the unauthorized allotment of Govt. land to the respondent No.7;
- (ii) to file a charge sheet against the Govt. officials who have involved themselves in the abuse of power of their position in allotment of Govt. land to the respondent No.7 and;
- (iii) for cancelling the lease agreement entered between the respondent No.7 and the Govt. of Meghalaya.

**9.** The respondent No.7 had filed affidavit-in-opposition wherein, it is stated that the respondent No.7 is a Co-operative Society registered under the Meghalaya Cooperative Societies Act (Assam Act 1 of 1950 as adopted by Meghalaya). The primary objective of the society is to establish on cooperative basis settlement for its members by affording them facilities for owning a house and ultimately to develop the settlements into self-sufficient units. The society has been conceptualized and developed as an expert body expected to benefit the State in future. In Clause 4 (iii) of the Bye-Laws of the society, it has been clearly laid down that the object of the society is to provide for and maintain roads, water supply, drainage, lighting, sewage, conservancy services, parks, gardens, gymnasiums, markets, dispensaries, transport services, schools, libraries and other facilities of common interest. In furtherance of the aforesaid objectives, the society through its Secretary vide his letter dated 25.02.2010 bearing reference number SCOHCSL/2009-10/ to the Director of Urban Affairs Department, Govt. of Meghalaya, Shillong assured that out of the total land allotted to the respondent No.7, 53% of the land is to be developed for public purposes like shopping complexes, schools, a dispensary, an indoor stadium, parks etc. for common public use

and an additional 10% for other infrastructure like road, water supply etc. It is also further assured that such beneficiaries of the land allotted will not derive any personal benefit from such portion i.e. more than half of the allotted land. Accordingly, the Department of Revenue and Disaster Management calculated and fixed the premium also taking into account that the annual land revenue is also payable and also that the allotted land being the Govt. land, it is subjected to resumption. The object of the respondent No.7 mentioned in Bye-Laws No.4 of the respondent No.7-Society reads as follows:-

“OBJECT

*4.(i) The object of the Society shall be primarily to establish on cooperative basis settlements for members, by affording them facilities for owning a house and ultimately to develop the settlements into self-sufficient units.*

*(ii) To render assistance to the members of the society in acquiring suitable accommodation and facilities for good community living and to that end, take all necessary action like planning, acquisition and development of land, arboriculture for the development of appropriate housing and eco-friendly habitat.*

*(iii) To provide and maintain roads, water supply, drainage, lighting, sewage, conservancy services, parks, gardens, gymnasiums, markets, dispensaries, transport services, schools, libraries and other facilities of common interest.*

*(iv) In furtherance of the above objects, the society shall, in conformity with the Act, Rules and these Bye-Laws, have the power to raise funds by way of loans, shares, grants, donations, to acquire lands on purchase, hire or lease, to develop, sell, lease or let out such lands or erect buildings, to pull down, repair, alter or otherwise deal with such buildings, to purchase, sell, hold, exchange, mortgage, rent, leases, sublease, surrender, accept surrenders of and otherwise deal with land or and the buildings thereon and to foster growth of social, recreate, educational, business and other institutions contributing to the material, economic and moral welfare of its members and their dependants and generally to do all such things as are incidental or conducive to the attainment of the above objects of the Society.”*

10. The Revenue and Disaster Management vide Circular No.RDS.37/88/114 dated 22.05.1992 brought out a schedule for fixing a premium on settlement of land to individuals and various organizations for various purposes. The criteria which were taken into account for fixing the premium included the purpose for which the land was allotted, its market value, location and as to whether it was an encroached land or un-encroached land. For convenience, the said Circular dated 22.05.1992 is quoted hereunder:-

**“GOVERNMENT OF MEGHALAYA  
REVENUE DEPARTMENT**

*No.RDS.37/88/114,                    dated Shillong, the 22<sup>nd</sup> May, 1992.*

*From:                    Shri. J.M. Phira, IAS,  
                              Additional Chief Secretary to the Govt. of Meghalaya,  
                              Revenue Department, Shillong-1.*

*To,*

*All Deputy Commissioners,  
                              All Sub-Divisional Officers (Civil).*

*Sub:                    Fixation of Premium on settlement of land with  
                              individuals and organizations for various purposes.*

*Sir,*

*In supersession of previous orders of the Government on the  
above subject, the Governor of Meghalaya is pleased to fix the rates  
of premium on settlement of land with individuals and organizations for  
various purposes as indicated in the Schedule below, with immediate  
effect.*

<u>Purpose</u>	<u>Un-encroached land</u>	<u>encroached land</u>
<i>a) For religious and charitable purposes.</i>	<i>5 percent of the market value of the land at the time of settlement.</i>	<i>25 percent of the market value of the land at the time of settlement.</i>
<i>b) Socio-Cultural and agricultural purpose.</i>	<i>10 percent of the market value of the land at the time of settlement.</i>	<i>45 percent of the market value of the land at the time of settlement.</i>
<i>c) Residential purposes.</i>	<i>50 percent of the market value of the land at the time of settlement.</i>	<i>100 percent of the market value of the land at the time of settlement.</i>
<i>d) Commercial purposes.</i>	<i>100 percent of the market value of the</i>	<i>150 percent of the market value of the</i>

*land at the time of  
settlement.*

*land at the time of  
settlement.*

*The amount of premium is to be deposited to the  
appropriate head of account through a Treasury Challan.*

*Yours faithfully,  
Sd/- J.M. Phira,  
Additional Chief Secretary to the Govt. of Meghalaya,  
Revenue Department.”*

**11.** The land acquired by the Urban Affairs Department of the State of Meghalaya at Mawdiangdiang is to develop the NST to accommodate the future growth and expansion of Shillong city in a phased and planned manner with necessary infrastructure and public services with housing being one of the key features of this master plan. The respondent No.7-Society is a registered society with its own Bye-Laws which provides for creation of public infrastructure. The allotment of the land to the respondent No.7-Society had been with the tri-fold objectives of **(i)** catalyzing housing development in the NST **(ii)** reduction of demand of Govt. quarters and **(iii)** motivation of officers to serve the State with a higher degree of dedication and commitment. As such, allotment of land to the respondent No.7-Society for their residential purposes contributing to their well being of the members of the society and would inevitably lead to the common good of the people of the State of Meghalaya. In pursuance of the allotment order, an agreement dated 24.02.2009 i.e. lease agreement between the Govt. of Meghalaya and the respondent No.7-Society with many conditions was executed, and some of which are **(i)** lessee shall pay to the lessor the premium of the land and also the annual land revenue/lease rent at the rate to be determined at the time of allotment. The annual land revenue/lease rent for the said land shall be payable to the Director, Urban Affairs Department, Govt. of Meghalaya always before the 21<sup>st</sup>, March each year; **(ii)** the lessee shall, during the said

terms of the lease, pay all rates, taxes and charges of every description now payable or hereinafter become payable in respect of the demised premises or the buildings etc. constructed thereon; **(iii)** the said land is allotted for setting up a residential colony and allied facilities thereto and shall not be used for the purpose other than that for which it is allotted and; **(iv)** that if the said land is no longer required for the purpose for which it was allotted the lessee shall surrender the said land to the lessor free from all encumbrances and in no case shall the said land be transferred to any other Body or individual without prior permission of the State Govt. After executing the said lease deed, the respondent-7-society had taken over possession of the allotted land under handing over/taking over dated 20.05.2009 of the Meghalaya Urban Development Authority, Shillong, which reads as follows:-

**“MEGHALAYA URBAN DEVELOPMENT AUTHORITY  
SHILLONG.**

*No.MUDA.14/2007-08/15 dated Shillong, 20<sup>th</sup> May, 2009.*

**HANDING OVER / TAKING OVER**

*A plot of land measuring 45.01 acres, MORE OR LESS at Mawdiangdiang has been handed over to **THE CIVIL SERVICE OFFICERS HOUSING CO-OPERATIVE SOCIETY, LTD, SHILLONG** for the purpose of setting up a residential colony today the 20<sup>th</sup> May 2009 with the condition that:*

- 1. Ownership of the plot/land shall remain with the Govt. of Meghalaya.*
- 2. No subsequent Transfer of Title of land is allowed.*
- 3. The land shall be used only for the purpose for which it has been allotted.*
- 4. The terms of the Lease is as enclosed in Annexure-I*
- 5. Land Revenue and Land rent as per the Government prescribed rate of land revenue have to be paid.*
- 6. That if the land so allotted remains unutilized for 2 (two) years from the date of handing over, the land shall revert back to the Urban Affairs Department and the same will be allotted to other needy department(s).*

7. *Building permission must be obtained from the Meghalaya Urban Development Authority, Shillong before starting any construction works including boundary walls.*
8. *A 20m wide Primary road has to be provided through the plot as indicated in the proposed road network for New Shillong Township. (Annexure II)*

*A copy of the map is enclosed herewith.*

*Handed over by:*

*Taken over by:*

*Secretary,  
Sd/-  
Meghalaya Urban Development  
Authority, Shillong.*

*Secretary,  
Sd/-  
Civil Services Officers Housing  
Co-operative Society Housing Ltd.,  
Shillong.*

*Witness  
Sd/-  
Executive Engineer  
Meghalaya Urban Development  
Authority, Shillong.”*

*Witness  
Sd/-  
\_\_\_\_\_*

**12.** In compliance with the decision of the cabinet dated 09.08.2007 “the cabinet directed the Revenue Department to examine the feasibility of allotment of land to the professional, bureaucrats etc. who could contribute to the development of the State”, and also the said tri-fold objectives of the allotment of land and the object of the society i.e. to provide and maintain roads, water supply, drainage, lighting, sewage, conservancy services, parks, gardens, gymnasiums, markets, dispensaries, transport services, schools, libraries and other facilities of common interest, the Secretary of the respondent No.7-Society under his letter dated 25.02.2010, made an assurance to the Director, Urban Affairs Department, Govt. of Meghalaya, Shillong that the allotment of land will also be used for public purposes. The said letter dated 25.02.2010 reads as follows:-

*“CIVIL SERVICE OFFICERS HOUSING COOPERATIVE SOCIETIES LTD.  
(Regd.No.Shill 1 of 2006 under Meghalaya Cooperative Societies Act)*

<p><b>HEAD QUARTER:SHILLONG</b></p> <p><i>President</i> GP Wahlang, IAS</p> <p><i>Vice President,</i> B K Dev Verma, IAS</p> <p><i>Secretary</i> D.P. Wahlang, IAS</p> <p><i>Joint Secretary</i> S. Kharlyngdoh, MCS</p>	<p><i>From:</i> DP Wahlang, IAS Member Secretary, Civil Services Officers Housing Cooperative Society, HQR: Shillong.</p> <p><i>To:</i> Shri. B K Panda, Director, Urban Affairs Department, Govt. of Meghalaya, Shillong.</p> <p><i>Subject:</i> Allotment of land at Shillong Township.</p> <p>Sir,</p> <p>On behalf of the Society, I would like to express my sincere thanks to the government for allotment of the land to the society. The lease agreement for the purpose been executed and the society has taken possession of the land already.</p> <p>In this connection I would like to draw your attention to a condition of the letter under reference which mentions that the upper limit of land allotted to each member should not be more than 3000 sq.ft. It appears it may be due to impression of Government that only flats will be constructed by the society. It has been decided by the society to allot plots of suitable size to the members for construction of independent houses after earmarking 53% area for public purposes like shopping complex, schools, dispensary, indoor stadium, park etc. for the benefit of the members of the public and around 10% in addition, for other infrastructure like road, water supply etc. Even after earmarking the land for afore stated purpose more than 15 acres would be available for residential purpose. Considering the present strength and likely future strength of the members in the society it should be possible to allot more than 3000 sq.ft. for each member easily.</p> <p>In view, I am to request that the condition may be reviewed and relaxation of upper limit to 10,000 sq.ft. may be considered by the Government.</p> <p>Yours faithfully, Sd/- (D.P. Wahlang, IAS) Member Secretary, Civil Services Officers Housing Cooperative Society”</p>
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13. The sanction of the competent authority under the provision of Section 3(1) of the said Act of 1971 had been obtained for allotting the said land to the respondent No.7. The respondent No.7 in para 12 of the affidavit-in-opposition had categorically stated that further statement of the writ petitioner that the membership of the respondent society is restricted to 50

members is incorrect. Presently, there are 60 registered members with 40 impending applications. After allocating 53% of the land for public utility or social purposes, 22% for common facilities such as roads, water tanks, transformers etc. 25% of the land measuring 11.25 acres remains for residential purposes. The area of land on allocation to the existing 60 members works out to 8250 sq.ft. of land for each member and if the 40 impending memberships were to be considered, the allocation would work out to 4950 sq.ft. per member which is well within the sanctioned upper limit of 10,000 sq.ft. as per the order dated 29.03.2010 of the Chief Secretary, Govt of Meghalaya. As such the allegation of the writ petitioner that the allocation of land to each member is in excess of 811% is not based on facts and as such denied.

**14.** The respondent No.7 in their affidavit-in-opposition further stated that the States like Karnataka, Andhra Pradesh, Maharashtra, Gujarat and Uttar Pradesh have provided land to their officers as welfare measures and also the State Govt. had acquired land for the public welfare purposes for construction of residential quarters of housing society. It is also stated that the Adarsh Housing Society scam in Mumbai, Maharashtra is totally different from the present case for allotment of land to the respondent No.7 inasmuch as, the said case related to allocation of land for development of a housing complex for welfare of serving and retired defence personnel which were subsequently illegally diverted and allotted to non-defence personnel. On a number of occasions, former and incumbent Govt. officials of the State of Meghalaya had spoken the reason for allotment of land to the respondent No.7 for the public purposes for development of the State of Meghalaya and also for the interest of the officers working under the Govt. of Meghalaya. Mr. RG Lyngdoh (former Home Minister of the State of Meghalaya) in an article published in Eastern Chronicle dated 10.04.2012 stated that “.... *at that point*



*of time the officers drew a lot of flak from several quarters who felt that they were suitcase officers as they would come here, finish their stint and return back home so obviously their commitment level towards the State was questioned .... it was not a nice feeling to see officers who have served their entire life in the State having to return back to their native places where they are compelled to live a lonely retired life since they are not known or recognized by the local populace ....". Mr. Paul Lyngdoh (former Urban Affairs Minister of the State of Meghalaya) in an article published in Shillong Times observed that "the familiar notes of dissent and opposition to the move to allot land to civil servants in the new Shillong Township smack of sheer lack of clarity and focus on the part of the putative defenders of the indigenous people's interest .... the dwelling units for the civil servants in a land to be leased to a registered society – with ownership vested firmly in the State Government of Meghalaya would not only have been a boon to serving bureaucrats, but, more importantly, would have given a fillip to the growth of new Shillong in terms of vital infrastructure like link-roads, water and power ...."*

**15.** The respondent No.7 in their affidavit-in-opposition had categorically denied the allegations and assertions of the petitioner in the writ petition that some of the members of the respondent No.7 were file pushers in allotting the said land in favour of the respondent No.7 and the authority exercised its power conferred on them by law in bad faith and for collateral purpose.

**16.** The respondent No.2 i.e. Commissioner & Secretary, Urban Affairs Department, Shillong also filed affidavit-in-opposition wherein, it is stated that the respondent No.7 is a socio-cultural society and conceptualize to develop a pool of talent expertise which could be used for the benefit of

the State in future. Further the society had committed to develop 53% of the land as a part of social obligation, facilities such as, school, dispensary, park and sports grounds etc. which are to be used for the benefit of members of public. Accordingly, premium was calculated and the premium fixed by the Revenue and Disaster Management Department has taken into consideration that the annual land revenue is also payable and the fact that being a Govt. land, it is subjected to resumption. Taking into consideration the amount of compensation to be paid by the State Govt. in acquiring the said land, the rate per acre comes to Rs.2,55,183/- and 45.01 acres (which was allotted to the respondent No.7) is Rs.1,14,85,825/-. 10% of these is Rs.11,48,000/- where the society i.e. respondent No.7 had paid more than the amount which was paid in acquiring the land. The calculation of the premium for the said land allotted to the respondent No.7-Society was made taking into consideration of the annual revenue to be paid by the respondent No.7-Society and the purpose for which land had been allotted in compliance with the Circular No.RDS.37/88/114 dated 22.05.1992, which had been quoted above.

**17.** The respondent No.2 in the affidavit-in-opposition further stated that all the lands in the NST had been allotted by the competent authority based on the proposal in line with the decision of the cabinet held on 09.08.2007 after examining the feasibility of allotment. In the case of the respondent No.7, the allotment of land was approved by the Minister In-charge Urban Affairs on 14.05.2008. Subsequently, the State Govt. had constituted the Land Allotment Committee on 17.01.2009 under the Chairmanship of Minister In-charge Urban Affairs. The Minister In-charge of Urban Affairs reviewed the matter of allotment of land to the respondent No.7 and on obtaining views from the Revenue and Law Department, the matter was put up to the Land Allotment Committee in its meeting held on

19.11.2009 and the Committee approved the allotment. As such, there is no infirmity or illegality in the allotment. The earlier decision was that the upper limit of land allotted to each member should not exceed 3228 sq.ft. (300 sq. metre). However, the respondent No.7 vide their letter dated 25.02.2010, requested the Director, Urban Affairs Department to relax the upper limit from 3228 sq.ft. to 10,000 sq.ft. as per member after earmarking 53% area for public purposes, and 10% in addition for other infrastructure like road, water supply etc. There are 62 members with 40 remaining applications of the respondent No.7 and out of 45.01 acres of land allotted to the respondent No.7-Society, 53% is earmarked for public utility or social purpose for the benefit of the members of public in the form of schools, sports, ground/stadium, park, shopping complex and dispensary which is in conforming with its bye-laws. Around 22% is for common facilities like roads, water tanks, transformer, water land etc. and the remaining 20% is for residential purpose i.e. 11.25 acres. The 11.25 acres of land meant works out to 7985 sq.ft. per member. Further, if all 40 applicants are included as member of the society, the area worked out per member comes to 4854 sq.ft. With regard to the implication of the Meghalaya Transfer of Land (Regulation) Act, 1971, the matter was examined by the Govt. in view of the cabinet decision, aiming on allotment of land to the professionals, bureaucrats etc. and as a competent authority under Section 3(1) of the aforesaid Act, the Revenue and Disaster Management Department had approved the allotment as it would contribute to the development of the State which would enable the State to take up the pool of talent expertise which could be used for the benefit of the State in future. Further, the respondent No.7 has given commitment of developing 53% of the land for public infrastructure such as school, dispensary, play ground and parks at its own cost for the benefit of members of public.

**18.** In the additional affidavit of the respondent No.7, it is stated that the society had taken a decision to extend its membership to all categories of officers/public servants and constitutional authorities, who have worked and have been working in the affairs of the State of Meghalaya. The respondent No. 7 further stated in the additional affidavit that land that had been earmarked for public purposes is 53% and another 22% is earmarked for common facilities like roads, power, water supply etc. It has been estimated that at the current membership of 60 persons, the cost per member for common facilities is around 15 lakhs and if all the members in the waiting list are included, the cost would be Rs.11 lakhs. This cost is in addition to the price of land already paid to the Govt. Further, as per the commitment, the contribution of every member will be estimated on the development of public utilities like park, school etc. depending on the development plan and assistance from external sources, if any, in due course.

**19.** Respondent No.3 also filed affidavit-in-opposition wherein, it is stated that the Revenue and Disaster Management Department has brought out a schedule for fixation of premium on settlement of land to individuals and various organization for various purposes as per Circular dated RDS.37/88/114 dated 22.05.1992, which had been quoted above. Section 3(1) of the said Act of 1971 provides for transfer of land to a non-tribal with the sanction of the competent authority. Since the respondent No.3 is the competent authority had already sanctioned the allotment of land to the respondent No.7. The allotment of land to the respondent No.7 had not violated the provisions of the said Act of 1971. The cabinet sub-committee referred to its Office Memorandum No.RDS79/86/36 dated 02.06.1989 does not apply in relation to the land of the Urban Affairs Department as the Urban Affairs Department had notified their own Land Allotment Committee vide

their Circular dated 17.01.2009. The premium had been fixed by the Revenue and Disaster Management Department after taking into consideration that besides the premium, the annual land revenue is also payable and also the fact that being a Govt. land, it is subjected to resumption.

**20.** It is fairly settled that it is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. The Apex Court in ***Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors: (2009) 7 SCC 561*** held that:

*“169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to “trial and error” as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.”*

**21.** The Apex Court also reiterated the ratio laid down in ***Liberty Oil Mills vs. Union of India (2009) 7 SCC 561*** and ***Villianur Iyarkkai Padukappu Maiyam’s case (Supra)*** in ***Arun Kumar Agarwal v. Union of India & Ors: (2013) 7 SCC 1***. Paras 43, 44, 45, & 46 of the SCC in ***Arun Kumar Agarwal’s case (Supra)*** read as follows:-

“43. In **Metropolis Theatre Co. v. Chicago: 57 L Ed 730: 228 US 61 (1913)** the Supreme Court of the United States held as follows: (L Ed p. 734)

“..... The problems of Government are practical ones and may justify, if they do not require, rough accommodation, illogical, if may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not always discernible; the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void. ....”

44. In **LIC v. Escorts Ltd: (1986) 1 SCC 264**, this Court held that: (SCC p.344, para 102)

“102. .... The Court will not debate academic matters or concern itself with intricacies of trade and commerce.”

The Court held that: (SCC p.344, para 102)

“102. .... When the State or an instrumentality of the State ventures into corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder.”

45. In **Liberty Oil Mills v. Union of India: (2009) 7 SCC 561** this Court held that expertise in public and political, national and international economy is necessary, when one engage in the making or in the criticism of an import policy. Obviously, courts do not possess the expertise and are consequently, incompetent to pass judgments on the appropriateness or the adequacy of a particular import policy.”

46. In **Villianur Iyarkkai Padukappu Maiyam v. Union of India & Ors: (2009) 7 SCC 561** this Court held as follows: (SCC p.605, para 169)

“169. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts

*inclined to strike down a policy at the behest of the petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Wisdom and advisability of economic policy are ordinarily not amenable to judicial review. In matters relating to economic issues the Government has, while taking a decision, right to “trial and error” as long as both trial and error are bona fide and within the limits of the authority. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts.”*

22. The Apex Court in ***Ekta Shakti Foundation v. Govt. of NCT of Delhi***: 2006 AIR SCW 3601 held that:

10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See ***Ashif Hamid v. State of J&K*** (AIR 1989 SC 1899), ***Shri Sitaram Sugar Co. v. Union of India*** (AIR 1990 SC 1277)). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

11. The correctness of the reasons which prompted the government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

12. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the government so long as the infringement of fundamental right is not shown courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

13. The Court should constantly remind itself of what the supreme Court of the United States said in ***Metropolis Theatre Company v. City of Chicago*** (1912) 57 L Ed 730. “The

*problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. [See: **State of Orissa and others v. Gopinath Dash and Others: (2005) 13 SCC 495**].*

23. The questions call for consideration in the present writ petition had already answered by the Apex Court in 4(four) cases that ordinarily the Govt. is the best authority to determine if the housing scheme for a limited number of persons could be a public purpose and the need of a section of the public may be a public purpose and it cannot be contended that the housing scheme of a limited members cannot be described as a public purpose. The said cases are: (i) **Pandit Jhandu Lal v. State of Punjab: AIR 1961 SC 343** (ii) **Ratilal Shakarabhai & Ors v. The State of Gujarat & Ors: 1970 (2) SCC 264** (iii) **Ram Sarup v. The Land Acquisition Officer, Aligarh & Ors: (1973) 2 SCC 56** and (iv) **State of Gujarat v. Musamigan Imam Hiader Bux Razvi & Anr: (1976) 3 SCC 536**. The question No.(ii) calls for consideration in **Ratilal Shakarabhai's** case (*Supra*) was that “a housing scheme for a limited number of persons cannot be considered as a public purpose?” The Apex Court in clear terms held (SCC) that:

*“2. The appellants are the owners of certain lands in village Wadaj in Ahmedabad. Some areas out of those lands were notified for acquisition under Section 4 of the Land Acquisition Act, 1894 on March 19, 1964 for a housing scheme prepared by the 3<sup>rd</sup> respondent, a Co-operative Society registered under the Co-operative Societies Act. The notification under Section 6 of that Act was issued on October 1, 1964. This was followed up by other proceedings under the Land Acquisition Act. During the pendency of those proceedings, the appellants moved the High Court of Gujarat under Article 226 of the Constitution challenging the validity of the acquisition proceedings. That petition was summarily dismissed by the High Court.*

*3. The acquisition proceedings were challenged before us on various grounds. We shall now proceed to deal with the grounds urged before us. It was urged by the learned Counsel*



for the appellant that the proposed acquisition was for a company and as no steps were taken under Sections 40 to 42 of the Land Acquisition Act, the proceedings are vitiated. It is conceded on behalf of the State that the agreements contemplated by Sections 40 to 42 were not entered into. But it was urged on behalf of the respondents that the acquisition in question was not for the purpose of a company but it was for a public purpose. Both the notifications under Sections 4 and 6 say that the proposed acquisition was for a public purpose namely for a housing scheme undertaken by Shri Alapa Housing Co-operative Society Ltd., Ahmedabad with the sanction of the Government. Therefore, if the proposed acquisition is not for a company but for a public purpose then there was no need to comply with Sections 40 to 42.

4. Gujarat legislature by Gujarat Unification and Amendment Act 20 of 1965 amended Clause (f) of Section 3 of the Land Acquisition Act, 1894 which defined the expression "public purpose". As per that amendment after Sub-clause (2) the following clause was added:

“and

(3) a housing scheme which the State Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the State Government by a local authority or company.

7. We are unable to accede to the contention of the appellant that a housing scheme for a limited number of persons cannot be considered as a public purpose. It was said that there were hardly about 20 members in the co-operative society in question and therefore the housing scheme for their benefit cannot be considered as a public purpose. It was also urged that there was no need for acquiring any land for the scheme in question. Section 6(3) of the Land Acquisition Act provides that a declaration under Section 6 shall be conclusive evidence that the land proposed to be acquired is needed for a public purpose. Therefore this Court cannot go into the question whether the need was genuine or not unless we are satisfied that the action taken by the Government was a fraudulent one. We are also unable to concede to the proposition that the need of a section of the public cannot be considered as a public purpose. Ordinarily, the Government is the best authority to determine whether the purpose in question is a public purpose or not and further the declaration made by it under Section 6 is a conclusive evidence of the fact that the land in question is needed for a public purpose - see **Smt. Somavanti and others v. the State of Punjab and others: (1963) 2 SCR 774**. That decision lays down that conclusiveness in Section 6(3) must necessarily attach not merely to a 'need' but also to the question whether the purpose was a public purpose”.

24. The Apex Court in **Ram Sarup's** case (*Supra*) held (SCC) that:

*"2. By means of a notification, dated April 19, 1949, issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter called the Act) it was notified for general information that the land mentioned in the schedule was needed for a public purpose. In the schedule the area was given as 117 Bighas and 9 Biswas. The schedule also contained the following:*

*"For what purpose required. – For the construction of residential quarters for the members of Aligarh Co-operative Housing Society Limited, Vishnupuri, Aligarh."*

*3. In November, 1951, an agreement was entered into between the Governor of U.P. and the Co-operative Housing Society Ltd., Vishnupuri, Aligarh, in accordance with the provisions of Part VII of the Act. On November, 30, 1951, a notification was issued under Section 6 of the Act in which it was stated that the Governor after considering the report made under Section 5-A(2) of the Act was pleased to declare under Section 6 that he was satisfied that the land mentioned in the schedule was needed for a public purpose. Under Section 7 the Collector was directed to take order for the acquisition of the land. In the schedule the same words appeared as appeared in the notification under Section 4 viz:*

*"For what purpose required. – For the construction of residential quarters for the members of Aligarh Co-operative Housing Society Limited, Vishnupuri, Aligarh."*

*7. The present case has greater similarity with the facts in a subsequent decision of this Court in **State of West Bengal and Others v. P.N. Talukdar and others: AIR 1965 SC 646: (1966) 1 SCJ 28**. There in the notification under Section 6 it was stated that the land was needed for a public purpose, namely for the construction of staff quarters, etc., of Ramkrishna Mission and was needed for that public purpose.*  
....."

25. The Apex Court in **Musamigan Imam Hiader Bux Razvi's** case (*Supra*) held (SCC) that:

*"3. Although two important points were raised in the aforesaid writ petitions viz. (1) whether the acquisition of land for Co-*

operative Housing Society is a public purpose and (2) whether the Government could cancel the notification dated April 29, 1963 issued by it under section 6 of the Act and issue a fresh notification dated April 28, 1966 under the said section of the Act, the first point does not survive and has rightly not been canvassed before us in view of the decisions of this Court in **Ratilal Shankerbhai v. State of Gujarat: (1970) 2 SCC 264: AIR 1970 SC 984, Pandit Jhandu Lal v. The State of Punjab: (1961) 2 SCR 459: AIR 1961 SC 343 and Ram Swarup v. The District Land Acquisition Officer, Aligarh: (1973) 2 SCC 56: AIR 1972 SC 2290.** In these cases, it has been made clear that ordinarily the Government is the best authority to determine whether the purpose in question is a public purpose or not; it cannot be contended that a housing scheme for a limited number of persons cannot be considered as a public purpose; and the need of a section of the public may be a public purpose."

26. The Apex Court in **Sanchit Bansal & Anr. v. Joint Admission Board & Ors: (2012) 1 SCC 157** held that:

"26. This Court has also repeatedly held that courts are not concerned with the practicality or wisdom of the policies but only illegality. In **Directorate of Film Festivals v. Gaurav Ashwin Jain: (2007) 4 SCC 737** this court held: (SCC p.746, para 16)

"16. .... Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review". (emphasis supplied)

27. The Apex Court in **Bangalore Development Authority v. Aircraft Employees' Cooperative Society Limited & Ors: (2012) 3 SCC 442** held that:

"65. The principle which can be deduced from the abovenoted precedents is that while examining challenge to the

*constitutionality of a statutory provision on the ground of excessive delegation, the Court must look into the policy underlying the particular legislation and this can be done by making a reference to the Preamble, the objects sought to be achieved by the particular legislation and the scheme thereof and that the Court would not sit over the wisdom of the legislature and nullify the provisions under which the power to implement the particular provision is conferred upon the executive authorities.”*

**28.** It is fairly settled law that it is the State to decide whether the scheme framed by the State would directly or indirectly improves living standards or means of livelihood of the public in the State. So long as the scheme comes within the realm of public purpose and monies for the schemes are withdrawn with passing appropriate Appropriation Bill. Judicial interference is permissible when action of Govt. is unconstitutional and not when such action is allegedly not wise. Distribution of State largesse is to be made by the State Govt., there can be distribution of State largesse for the Govt. public welfare scheme. The Apex Court in ***S. Subramaniam Balaji v. State of Tamil Nadu & Ors: (2013) 9 SCC 659*** held that it is the State Govt. who is to decide if the scheme of the State Govt. would directly or indirectly improves living standards or means of livelihood of the public in the State. So long as the scheme comes within realm of public purpose, monies for the schemes are withdrawn with passing appropriate Appropriation Bill. The concepts of livelihood and standard of living are bound to change in their content from time to time. The distributing of State largesse in the form of distribution of colour TVs, laptops, etc. to eligible and deserving persons is directly related to the directive principles of the State policy. As a result, the argument of the appellant that giving of color TVs, laptops, mixer grinders, etc. by the Govt. after adhering to due process is not an expense for public purpose cannot be agreed with. Judicial interference is permissible when action of the Govt. is unconstitutional and not when such action is not wise.

Paras 49, 51, 74, 78, 84.2 & 84.3 read as follows:-

***“IV. The schemes under challenge operate within the parameters of public purpose and Article 14 of the Constitution has no role to play***

49. The argument of the appellant that giving of colour TVs, laptops, mixer-grinders, etc. on the basis of the manifesto of the party that forms the Government is not an expense for a public purpose. This argument is devoid of any merit according to the learned senior counsel for the State of Tamil Nadu. It was submitted that the concept of State largesse is essentially linked to the directive principles of State policy. Whether the State should frame a scheme, which directly gives benefits to improve the living standards or indirectly by increasing the means of livelihood, is for the State to decide. The Preamble of the Constitution recognizes socialism as one of the pillars of Indian democracy. The Preamble has been held to be a part of the Constitution by a catena of judgments including **Kesavananda Bharati v. State of Kerala: (1973) 4 SCC 225**. The State largesse is directly linked to the principle of socialism and, therefore, it is too late in the day for anybody to contend that the Government giving colour TVs, laptops, mixer-grinders, etc. that too to the eligible persons as prescribed by way of government order is not a public purpose. For the same reasons, it must be held that it is a part of government function to take measures in connection with the government largesse.

51. The grievance of the appellant is that the public resources are being used for the benefit of individuals. According to the learned senior counsel for the respondent, this argument is completely misconceived. It was submitted that in a catena of cases, this Court has held that while judging the constitutional validity of any law or any State action, the directive principles of State policy can be taken into account. Article 38 contemplates that the State shall strive to promote the welfare of the people. Article 39 contemplates that the State shall take actions to provide adequate means of livelihood and for distribution of material resources of the community on an egalitarian principle. Article 41 contemplates that the State shall render assistance to citizens in certain circumstances and also in cases of undeserved want. Article 43 directs that the State shall endeavour to secure to all workers, by suitable legislation or economic organization or any other way to ensure decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workers. Similarly, Article 45 contemplates that the State shall endeavour to provide early childhood care and education to all children below the age of 6 years and Article 46 says that the State shall promote educational and economic interests of the weaker sections of the people. Article 47 contemplates that the State shall take steps to raise the level of nutrition and the standard of living. The concept of livelihood and standard of living are bound to change in their content from time to time. This Court has dealt with the concept of minimum wage, the fair wage and the living wage while dealing with industrial disputes and has noted that

these concepts are bound to change from time to time. What was once considered to be a luxury can become a necessity. The concept of livelihood is no longer confined to a bare physical survival in terms of food, clothing and shelter, but also now must necessarily include some provision for medicine, transport, education, recreation etc. How to implement the directive principles of State Policy is a matter within the domain of the Government, hence, the State distributing largesse in the form of distribution of colour TVs, laptops, mixer-grinders etc. to eligible and deserving persons is directly related to the directive principles of the State Policy.

74. If we analyze the abovementioned articles and the rules of procedure, it is established that there are various checks and balances within the mandate of the Constitution before a scheme can be implemented. As long as the schemes come within the realm of public purpose and monies for the schemes is withdrawn with appropriate Appropriation bill, the court has limited power to interfere with such schemes.

78. With regard to the contention that distribution of State largesse in the form of colour TVs, laptops, mixer-grinders, etc., violates Article 14 of Constitution as the unequals are treated equally. Before we venture to answer this question, we must recall that these measures relate to implementation of the Directive Principles of State Policy. Therefore, the principle of not to treat unequals as equal has no applicability as far as State largesse is concerned. This principle applies only where the law or the State action imposes some burden on the citizen either financial or otherwise. Besides, while implementing the directive principles, it is for the Government concerned to take into account its financial resources and the need of the people. There cannot be a straitjacket formula. If certain benefits are restricted to a particular class that can obviously be on account of the limited resources of the State. All welfare measures cannot at one go be made available to all the citizens. The State can gradually extend the benefit and this principle has been recognized by this Court in several judgments.

84.2. Further, it has been decided that the Schemes challenged in this writ petition falls within the realm of fulfilling the directive principles of State policy thereby falling within the scope of public purpose.

84.3. The mandate of the Constitution provides various checks and balances before a scheme can be implemented. Therefore, as long as the schemes come within the realm of public purpose and monies withdrawn for the implementation of the schemes by passing suitable Appropriation Bill, the Court has limited jurisdiction to interfere in such schemes."

29. The Apex Court in **S. Subramaniam Balaji** case (Supra) held that that:

***“Issue No.4: Whether the Comptroller and Auditor General of India has a duty to examine expenditures even before they are deployed?”***

*80. As reiterated earlier, the Comptroller and Auditor General of India is a constitutional functionary appointed under Article 148 of the Constitution. His main role is to audit the income and expenditure of the Governments, Government bodies and state-run corporations. The extent of his duties is listed out in the Comptroller and Auditor General’s (Duties, Powers etc.) Act, 1971. The functioning of the Government is controlled by the Constitution, the laws of the land, the legislature and the Comptroller and Auditor General of India. CAG examines the propriety, legality and validity of all expenses incurred by the Government. The office of CAG exercises effective control over the government accounts and expenditure incurred on these schemes only after implementation of the same. As a result, the duty of the CAG will arise only after the expenditure has incurred.”*

**30.** The allegations of malafide are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Court would, therefore, be slow to draw dubious inferences from incomplete facts placed before it by a party. In the absence of necessary particulars of the charge of bias and malafide making out a prima facie case in the writ petition, the High Court is justified in refusing to carry on investigation into the allegations of malafides. Therefore, in the case of the charge of bias and malafide, there should be necessary particulars for making out a prima facie case in the writ petition.

**31.** For the foregoing reasons and discussions, the questions call for consideration in the present writ petition (PIL) are answered against the writ petitioner. This Court is of the considered view that the allotment of land to the respondent No.7 in the given case under the policy decision of the Govt. for public welfare comes within the realm of public purpose and would directly or indirectly improve the living standards and means of livelihood of not only the members of the respondent No.7 but also the public more particularly, the residents of NST and its neighbouring areas.

**32.** Writ petition (PIL) is devoid of merit and accordingly dismissed.

**33.** Parties are to bear their own costs.

**JUDGE**  
**(Justice S.R. Sen)**

**JUDGE**  
**(Justice T Nandakumar Singh)**

**Lam**