



AFR

Court No. - 5

Case :- WRIT - C No. - 13950 of 2020

Petitioner :- Sanjay Kumar

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ankita Singhal, Siddharth Singhal

**Counsel for Respondent :- C.S.C., Arvind Kumar
Goswami, Suresh C. Dwivedi**

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Siddharth Singhal, learned counsel for the petitioner, Sri S.C.Dwivedi, learned counsel for the respondent no. 3, learned Standing Counsel for the respondent nos. 2 and 4 and Sri Arvind Kumar Goswami, learned counsel for the respondent no. 1/Union of India.

2. The present writ petition seeks to raise a challenge to certain conditions contained under the Scheme Guidelines of March, 2016 notified by the respondent no. 1 under the Pradhan Mantri Awas Yojana – Housing for All (Urban) and also under the Brochure issued by the respondent no. 3 in respect of the Pradhan Mantri Awas Yojana.

3. Challenge in particular is to Clause 1.4 of the Scheme Guidelines, 2016 under which the States/Union Territories have been given discretion to decide a cut-off date on which the beneficiaries need to be resident of that urban area for being eligible to take benefits under the scheme and Clause 3.1 of the Brochure issued by the respondent no. 3 which provides that the applicant is to be a citizen of India and a resident of district Ghaziabad. A further prayer has been made to command the respondent nos. 3 and 4 to consider and process the application of the petitioner for allotment of

an EWS House.

4. Counsel for the petitioner contends that the aforementioned conditions as contained under Clause 3.1 of the Brochure as also Clause 1.4 of the Scheme Guidelines are violative of the fundamental right of the petitioner under Article 19 (1) (e) of the Constitution of India which guarantees to all citizens the right to reside and settle in any part of the territory of India. He submits that the restrictions are not in the interest of the general public and are wholly unreasonable and are therefore legally unsustainable. He further submits that the petitioner being a resident of district Hapur and also belonging to the EWS category, cannot be excluded from the purview of the scheme.

5. The petitioner has placed reliance upon the judgment in the case of **Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others**¹ to support his contentions.

6. Learned counsel appearing for the respondents have strongly refuted the contentions sought to be raised on behalf of the petitioner by pointing out that the 'Pradhan Mantri Awas Yojna' is a scheme providing for housing for all and aimed at addressing the housing requirements of urban poor. It has been pointed out that the implementation of the scheme is to be made in respect of the urban areas and the conditions contained under the Scheme Guidelines are for the purpose of identifying the beneficiaries in specified urban areas for the purpose of grant of the benefit and therefore the conditions are in the interest of the general public and cannot in any manner be said to contain restrictions which may be held to be unreasonable. It is

1. (1997) 11 SCC 121

submitted that the grounds sought to be raised by the petitioner are legally untenable and the writ petition is liable to be dismissed.

7. Heard learned counsel for the parties and perused the record.

8. In order to appreciate the rival contentions, the conditions contained under the Scheme Guidelines of the respondent no. 1 and the Brochure issued by the respondent no. 3 may be looked into.

9. The Scheme Guidelines of March, 2016, which is on record, indicates that 'Pradhan Mantri Awas Yojana Housing for All (Urban)' was launched as a mission by the Central Government to address the housing requirements of urban poor including slum dwellers through following programme verticals :

- “(i) Slum rehabilitation of Slum Dwellers with participation of private developers using land as a resource
- (ii) Promotion of Affordable Housing for weaker section through credit linked subsidy
- (iii) Affordable Housing in Partnership with Public & Private sectors
- (iv) Subsidy for beneficiary-led individual house construction/enhancement.”

10. For the purpose of the scheme, the term 'beneficiary' has been defined as follows :-

“**Beneficiary** : A beneficiary family will comprise husband, wife and unmarried children.
The beneficiary family should not own a pucca house (an all weather dwelling unit) either in his/her name or in the name of any member of his/her family in any part of India.”

11. The scheme under Clause 2.1 provides coverage to all statutory towns as per Census 2011 and towns notified subsequently would be eligible for coverage under the

scheme/mission.

12. The implementation process for the scheme is provided for Clause 8 of the Scheme Guidelines, which is being extracted below :-

“8. Implementation Process

8.1 As a first step, States/UTs will sign a Memorandum of Agreement (MoA) to participate in the mission by agreeing to mandatory conditions and other modalities. A copy of the MoA to be signed between State/UT and Centre is placed at Annexure 3.

8.2 States/UTs will send proposals to the Ministry for inclusion of cities in the mission along with broad assessment of housing and resources requirement. Ministry will approve inclusion of these cities considering availability of resources. The credit linked subsidy component of the mission will, however, be implemented in all statutory cities/towns across the country right from the launch of the mission.

8.3 State/Cities will undertake a demand survey through suitable means for assessing the actual demand of housing. While validating demand survey, States/Cities should consider possible temporary migration from rural areas to the city just to take advantage of housing scheme and exclude such migrants from list of beneficiaries. On the basis of demand survey and other available data, cities will prepare Housing for All Plan of Action (HFAPoA). HFAPoA should contain the demand of housing by eligible beneficiaries in the city along with the interventions selected out of four verticals mentioned in para 3 of the guidelines. The information regarding beneficiaries should be collected by States/UTs in suitable formats but must contain the information as in Annexure 4. While preparing HFAPoA, State/UT and Implementing Agencies should also consider the affordable housing stock already available in the city as Census data suggests that large number of houses are vacant.

8.4 Jan Dhan Yojana/other bank account number and Aadhaar number/Voter ID card/any other unique identification details of intended beneficiaries or a certificate of house ownership from Revenue Authority of Beneficiary’s native district will be integrated in the data base of HFAPoA for avoiding duplication of benefit to one individual family. Beneficiaries will be validated by States/UTs and ULBs thereby ensuring their eligibility at the time of preparation of the projects and approval of projects.

8.5 On the basis of HFAPoA, States/Cities will subsequently prepare the Annual Implementation Plans

(AIPs) dividing the task upto 2022 in view of the availability of resources and priority. For larger cities, HFAPoA and AIPs can be prepared at sub-city (ward/zone etc.) level with the approval of concerned State/UT Government.

8.6 The result of demand survey, draft HFAPoA and draft AIP should be discussed with the local representatives including MLAs and MPs of that area so that their views are adequately factored in while finalising the plans and beneficiary list.

8.7 Cities which have already prepared Slum Free City Plan of Action (SFCPoA) or any other housing plan with data on housing, should utilise the existing plan and data for preparing "Housing for All Plan of Action" (HFAPoA). Houses constructed under various schemes should be accounted for while preparing HFAPoA & AIP. Flow Chart for preparing HFAPoA is placed below. The formats for the HFAPoA and AIP are kept at Annexure 5 & 6 respectively."

13. The implementation process under Clause 8 of the Scheme envisages that the States/Union Territories would send proposals to the Ministry for inclusion of cities in the mission along with broad assessment of housing and resource requirement and the Ministry would approve inclusion of these cities considering availability of resources. The State/Cities are to undertake a demand survey through suitable means for assessing the actual demand of housing and it has been provided that while validating the demand survey, the States/Cities would consider possible temporary migration from rural areas to the city just to take advantage of housing scheme and exclude such migrants from list of beneficiaries. It has also been provided that the unique identification details of the intended beneficiaries such as Jan Dhan Yojana/bank account number, Aadhaar number/Voter ID card or a certificate of house ownership from Revenue Authority of the Beneficiary's native district would be integrated in the data base of House For All Plan of Action (HFAPoA) for avoiding duplication of benefit to one individual family. The beneficiaries are to be validated

by the States/Union Territories and the Urban Local Bodies for ensuring the eligibility. It is further on the basis of the HFAPoA that States/Cities are to subsequently prepare the Annual Implementation Plans (AIPs) dividing the task upto the year 2022 in view of the availability of resources and priority. In respect of larger cities, HFAPoA and AIPs can be prepared at sub-city (ward/zone) level with the approval of the concerned State/Union Territory Government. It has also been provided that the result of the demand survey, draft HFAPoA and draft AIP are to be discussed with the local representatives including MLAs and MPs of the area so as to ensure that their views are adequately factored in while finalising the plans and the beneficiary list. The HFAPoA and AIPs are thereafter to be submitted for approval to the authorities and are to be reviewed on a yearly basis and based on HFAPoA and availability of resources, each city, is to prepare Detailed Project Report (DPRs). The Urban Local Bodies are also required to take into account the provisions of the City Development Plan, City Sanitation Plan etc. in preparing HFAPoA.

14. It has been clearly provided that the beneficiary would be eligible for availing only a single benefit under any of the four verticals under the scheme and the State/Union Territory Governments have been given the responsibility to ensure that the beneficiary is not given benefit of more than one component under the Mission.

15. The monitoring of the mission is provided for at all three levels: City, State and Central Government. The States and cities are required to develop mechanism for monitoring the progress of mission and its different components.

16. For the purposes of the implementation of the scheme

under the Pradhan Mantri Awas Yojana Housing for All (urban) Mission, the State Government under its order dated 21st March, 2016 issued guidelines providing for preparation of Detailed Project Reports (DPRs) for each urban unit under different verticals/components of the mission and also provides for the mechanism for implementation of the mission at the State and the City level.

17. The Brochure issued by the respondent no. 3 is under the aforementioned Scheme Guidelines of March, 2016 issued by the respondent no. 1 and also the directions issued by the State Government under its order dated 21.03.2016. The Brochure provides for online registration for EWS houses under the Pradhan Mantri Awas Yojana- Housing for All (urban). The eligibility conditions provided under Clause 3 of the Brochure are as follows :-

“3.0 पात्रता

3.1 आवेदक भारत का नागरिक हो तथा जिला गाजियाबाद का निवासी होना चाहिए।

3.2 योजना में आवेदन करने की अन्तिम तिथि तक आवेदक की आयु 18 वर्ष से कम नहीं होनी चाहिए।

3.3 आवेदक के पास उसके नाम से अथवा उसके परिवार (उसके पति/पत्नी एवं अविवाहित बच्चे) के किसी सदस्य के नाम से भारत के किसी भी भाग में पक्का मकान (सभी मौसम रिहायशी इकाईयां) नहीं होनी चाहिए।

3.4 उपरोक्त पात्रता धारक प्रधानमंत्री आवास योजना (शहरी) के अन्तर्गत आवेदन हेतु पात्र होंगे। राज्य नगरीय विकास अभिकरण द्वारा पूर्व में चयनित आवेदकों के साथ-साथ नये आवेदकों को भी गाजियाबाद विकास प्राधिकरण से प्रधानमंत्री आवास योजना (शहरी) के अधीन भवनों हेतु आवेदन करना होगा। आवेदन के पश्चात उनकी पात्रता का सत्यापन राज्य नगरीय विकास अभिकरण द्वारा किये जाने के उपरान्त सत्यापित आवेदक ही आबंटन के पात्र होंगे।

3.5 इस योजना के अन्तर्गत निर्मित किये गये आवास परिवार की महिला मुखिया अथवा परिवार के पुरुष मुखिया और उसकी पत्नी के संयुक्त नाम में होगा और केवल उन मामलों में जब परिवार में कोई वयस्क महिला सदस्य नहीं हो, तो परिवार के पुरुष सदस्य के नाम में किया जा सकता है।

3.6 दुर्बल आय वर्ग (ई डब्ल्यू एस) श्रेणी के भवनों हेतु Rs. 3.00 लाख (रुपये तीन लाख मात्र) तक की वार्षिक आय वाले परिवार ही पात्र होंगे। आवेदक को राज्य सरकार द्वारा प्राधिकृत अधिकारी से निर्गत आय प्रमाण पत्र जो योजना प्रकाशन के समय वैध हो, प्रस्तुत करना अनिवार्य होगा।”

18. It may be noticed that as per terms of the Scheme Guidelines 2016 issued by the respondent no. 1, the Brochure contains conditions under which the beneficiaries need to be resident of the urban area in respect of which the scheme has been launched by the respondent no. 3 and it also provides that the beneficiary family should not own a pucca house either in his/her name or in the name of any member of his/her family in any part of India to be eligible to take benefits under the scheme.

19. Article 19 (1) (e), which is the sole ground of challenge to the conditions contained under the Scheme Guidelines and the Brochure, guarantees to every citizen the right to reside and settle in any part of the territory of India. In terms of Article 19 (5), the right under Article 19 (1) (e) is subject to reasonable restrictions which may be imposed in the interests of general public.

20. We may take note that what is guaranteed under Article 19 (1) (e) is the right of a citizen to reside and settle in any part of the territory of India; however, in view of Article 19 (5), this does not prevent the State from imposing reasonable restrictions in the interests of general public. Any restrictions which are in the interests of the general public, in our view, would therefore not be open to challenge on the

ground of being violative of the right under Article 19 (1) (e).

21. The Scheme Guidelines and the conditions under the Brochure clearly demonstrate that the conditions, which are sought to be challenged by the petitioner, are in furtherance of the objectives of the scheme/mission which essentially seeks to address the housing requirement of urban poor including the slum rehabilitation of slum dwellers, promotion of affordable housing for weaker sections. The beneficiary family, under the Scheme, should not own a pucca house in any part of India in order to be eligible, which clearly goes to show the aim and focus of the scheme which is to provide housing for the urban poor.

22. The implementation of the scheme is to be made urban areawise, as per the Census- 2011 and towns notified subsequently would be eligible for coverage. The implementation process under the scheme provides for a survey for identification of the beneficiaries and for monitoring of the scheme at the level of the City, State and the Central Government. The implementation of the scheme and the identification of beneficiaries under the Scheme Guidelines and the order dated 21st March, 2016 issued by the State Government is to be made on the basis of DPRs to be prepared for each urban unit.

23. From the Scheme Guidelines, the order dated 21st March, 2020 issued by the State Government and also the Brochure, it is amply clear that the scheme is being implemented with the objective of addressing the housing requirement of the urban poor and the conditions under the scheme with regard to identification of beneficiaries with the requirement that the beneficiaries need to be resident of

urban area for which the scheme is being implemented is in larger public interest for the purposes of an effective implementation of the scheme. We are therefore of the view that the conditions under the Guidelines and also the Brochure cannot be held to impose restrictions which may be said to be unreasonable or in any manner have the effect of violating the right of the petitioner to reside and settle in any part of the territory of the country as guaranteed under Article 19 (1) (e).

24. The judgment in the case of **Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others**, which is sought to be relied upon by the petitioner, relates to eviction of pavement dwellers, and it was in the context of the said facts that certain observations were made with regard to right to shelter being part of the fundamental right under Articles 21 and 19 (1) (e), and while holding that no person has a right to make encroachments on places reserved or earmarked for a public purpose, it was stated that the State has the constitutional duty to provide adequate facilities for settlement of life and erection of shelter to make the right to life under Article 21 meaningful, effective and fruitful.

25. The facts of the present case are entirely distinguishable inasmuch as the claim of the petitioner herein is confined to a consideration for allotment of an EWS house under a housing scheme of the respondent no. 3, and it is not the case of the petitioner that his right to shelter, life or livelihood is being taken away, and accordingly the petitioner cannot derive any benefit from the ratio laid down in the decision in the case of **Ahmedabad Municipal Corporation** (supra).

26. Notice may also be had of the fact that right to adequate housing has come to be recognized as a basic human right. In **Olga Tellis and others Vs. Bombay Municipal Corporation and others**², on a petition filed on behalf of the pavement dwellers, it was held that the right to life guaranteed under Article 21 would include the right to livelihood and shelter.

27. Again in **M/s Shantistar Builders Vs. Narayan Khimalal Totame and others**³, which was a case relating to construction of dwelling units for weaker sections of society, it was held that the right to life would take within its sweep the right to food, the right to clothing, the right to a decent environment and a reasonable accommodation to live in. The observations made in the judgment in this regard are as follows :-

“9. Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.”

28. Taking a similar view in **P.G. Gupta Vs. State of Gujarat and others**⁴, it was held that right to residence and settlement including facilities and opportunities to weaker

2 1985 (3) SCC 545

3 1990 (1) SCC 520

4 1995 Supp (2) SCC 182

sections of the society to make life meaningful and livable in equal status with dignity of persons was held to be enjoined by Articles 38, 39 and 46 and 19 (1) (e). It was held imperative for the State to provide housing accommodation to the poor by providing for housing schemes where the weaker sections could have permanent settlement and residence assured under Articles 19 (1) (e) and 21 of the Constitution. The observations made in the judgment in this regard are as follows :-

“7...Article 19(1)(e) protects the right to residence and settlement in any part of the territory of India. The protection of life assured under Article 21 has been given expanded meaning of right to life. It is settled law that all the related provisions under the Constitution must be read together and given meaning of widest amplitude to cover variety of rights which go to constitute the meaningful right to life. The Preamble to the Constitution says that the people of India having resolved to secure to all its citizens social and economic justice also made it subject to equality of status and opportunity to promote the dignity of the individual in the united and integrated Bharat. Article 37 declares the rights in Part IV or fundamental law in the governance of the country. Article 39(b) enjoins that the ownership and control of the material resources of the community are to promote the welfare of the people by securing social and economic justice to the weaker sections so as to subserve the common good to minimise the inequalities in income and endeavour to eliminate inequalities in status. The State, thereby, evolved the scheme to provide facilities and opportunities to the individuals and also groups of people to have no houses of their own. Article 46, in particular, enjoins that the State shall promote with special care the economic interest of the weaker sections of the people and to protect them from social injustice.

8. Article 11(1) of the International Covenant on Economic, Social and Cultural Rights laid down that the States' parties to the Covenant recognise the "right to everyone to an adequate standard of living for himself and for his family including food, clothing and housing and to the continuous improvement of living conditions". The State parties will take appropriate steps to ensure the realisation of these rights. Recognising these obligations of the State and to give effect to the essential importance of International cooperation, the directions contained in Articles 38, 39 and 46, the Housing Scheme for allotment

to lower income group of the people was made. Possession of real property is the basis for and the symbol of wealth and influence in society. To the poor, settlement with a fixed abode and right to residence guaranteed by Article 19(1)(e) remain more a teasing illusion unless the State provides them the means to have food, clothing and shelter so as to make their life meaningful and worth-living with dignity.

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11. As stated earlier, the right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article 21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy planned development of the country and has undertaken massive housing schemes. As its part, allotment of houses was adopted, as is enjoined by Articles 38, 39 and 46, Preamble and 19(1)(e), facilities and opportunities to the weaker sections of the society of the right to residence, make the life meaningful and liveable in equal status with dignity of person. It is, therefore, imperative of the State to provide permanent housing accommodation to the poor in the housing schemes undertaken by it or its instrumentalities within their economic means so that they could make the payment of the price in easy installments and have permanent settlement and residence assured under Articles 19(1)(e) and 21 of the Constitution...”

29. In **Chameli Singh and others vs. State of U.P. and others**⁵, while considering the components of right to live under Articles 21 and 19 (1) (e), it was held that right to live as a human being would include right to food, water, decent environment education, medical care and shelter and referring to the Directive Principles of State Policy, it was held that the State would be deemed to be under an obligation to provide housing facilities to the weaker sections of society so as to bring them into the mainstream of national life and provide facilities and opportunities to them as fundamental to their basic human and constitutional rights. It was stated thus :-

“8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man.It

5 1996 (2) SCC 549

is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the Constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”

30. It is therefore seen that right to housing and shelter has been held to be included as part of the fundamental rights guaranteed under Articles 21 and 19 (1) (e) in a series of judicial pronouncements.

31. In the case at hand, the scheme in question—Housing for All (Urban) seeks to address the housing requirement of the urban poor by providing for rehabilitation of slum dwellers and promotion of affordable housing for weaker sections. The objective of the Scheme and Guidelines provided therefor being clearly with a view to address the objective of creating housing facilities for all, in particular, the urban poor—including slum dwellers, by providing for their identification urban areawise, the Scheme Guidelines can in no manner be said to be contrary to public interest so as to be said to be violative of any of the fundamental rights guaranteed to the petitioner, as asserted by him.

32. Counsel for the petitioner has not been able to point out as to how the conditions contained under the Guidelines and the Brochure, which are sought to be challenged, in any manner curtail his right to reside and settle in any part of the territory of the country as guaranteed under Article 19 (1) (e), or that the aforesaid conditions can be assailed on the ground of not being in the interest of the general public.

33. Having regard to the aforesaid facts, we are not inclined to exercise our discretionary jurisdiction under Article 226 of the Constitution of India in the present case.

34. The writ petition thus fails and is accordingly dismissed.

Order Date :- 10.11.2020
Pratima