

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

**WEDNESDAY, THE EIGHTH DAY OF APRIL TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

-

WRIT PETITION No.8421 of 2000

Between:

Smt. Gampa Rama Devi, W/o. Shivaiah,
Age 44 years, R/o. Q.No.B-3/3,
PTS Jyothinagar, NTPC Ramagundam,
Karimnagar District.

.. Petitioner

AND

The Executive Engineer,
A.P. Housing Board, Warangal & 2 others

.. Respondents

The Court made the following:

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.8421 of 2000

-

ORDER:

The erstwhile A.P. Housing Board has taken up construction of houses for allotment to needy persons in Karimnagar Town. Such houses were constructed in various phases. In the housing project termed as Phase-III, the

petitioner herein is one of the applicants. In the draw of lots conducted by the respondent Housing Board, the petitioner was found to be one of the eligible candidates for allotment of houses. Accordingly, she was issued allotment letter, dated 31.10.1997, allotting him house bearing No.259/MIG-I at Karimnagar Phase-III. The allotment letter mandates allottee payment of 10% of the cost i.e., Rs.17,500/- within one month and another 10% within two (2) months thereafter from the date of receipt of the allotment letter. The balance 70% should be paid in quarterly equitable installments. The allottee was also required to execute an agreement. According to the petitioner, he paid an amount of Rs.4,200/- by way of Demand Draft on 15.11.1988 and another Rs.3,250/- by way of a Demand Draft on 28.11.1990. By 16.12.1997, the petitioner paid 20% of the cost of the house. Even though initially 10% amount was paid in 1988, for more than 12 years the house was not completed. In spite of several representations made to the respondent authorities to hand over possession, the same was not handed over to the petitioner. While so, by notice, dated Nil.12.1999, the petitioner was informed that in spite of giving sufficient opportunity and several notices, the petitioner has not concluded the lease-cum-sale agreement. Therefore, the allotment made on 31.10.1997 is cancelled by order of cancellation of allotment, dated 27.04.2000, duly forfeiting the amount paid by him. Aggrieved thereby, this writ petition is filed.

2. Learned counsel for the petitioner submits that after the allotment letter, dated 31.10.1997, and before the impugned order of cancellation of allotment, dated 27.04.2000, the petitioner was not put on notice directing her to pay the balance installments and to take possession of the house allotted to her. The cancellation is, therefore, illegal as operative of principles of natural justice. The petitioner had sufficient justification and in default of payment of amount due, he would have afforded an opportunity to explain the reasons for not paying the amount. Learned counsel for the petitioner submits that even though the notice is dated nil.12.1999, it was actually served on the petitioner on 12.02.2000. Even before the said proceedings were dispatched, assuming as if the allotment was already cancelled re-auction notification was issued on 02.02.2000. The auction was conducted and a new party was informed for allotment of that house. The petitioner was not aware of the steps taken by the

respondent Housing Board conducting of fresh invitation of applications inviting interested persons to apply for allotment.

3. Learned counsel for the petitioner further submits that in all such cases where there was default of payment of amount due, always notices are issued and in spite of issuing notices and affording sufficient opportunity, if the person does not respond, finally the allotment is cancelled. In the instant case, no such notices were issued to the petitioner. Learned counsel for the petitioner further submits that even though the impugned cancellation letter, dated 27.04.2000, speaks about issuance of notices, no such notices are issued. The petitioner has offered to pay the balance amount and take possession of the house already allotted. She has also enclosed the demand draft for Rs.17,500/- vide D.D.No.010012, dated 20.03.2000. The said demand draft was acknowledged by the respondent Housing Board and the same was returned through a letter, dated 27.04.2000, holding that the allotment was already cancelled. By the time the letter was submitted along with the demand draft, the allotment to other person was not done and, therefore, at this stage, the respondent Housing Board ought to have considered the application of the petitioner, dated 24.03.2000.

4. Learned Standing Counsel representing the respondent Housing Board submits that in the letter of allotment itself, the condition was imposed mandating the petitioner to execute an agreement, but she has not executed the agreement as required and has not paid the installment of 10%. Therefore, as the conditions of allotment were violated, consequential action was taken in terms of the allotment letter as well as in terms of Regulation 22 (ii) of the Andhra Pradesh Housing Board (Allotment, Management and Sale of HIG, MIG, LIG and EWS) Regulations, 1997 (for short, 'the Regulations 1997').

5. In support of his contentions, no relief can be granted in favour of the petitioner. Learned standing counsel placed reliance on the decisions of this Court rendered in W.P.Nos.11343 of 2001, 24786 of 2004, 15726 of 2005 and 17992 of 2007. In support of his contention that the relationship between the

petitioner and the respondent Housing Board is of non-statutory contract and the rights of parties are cancelled by the terms of the contract and not by constitutional provisions and, therefore, the writ remedy is not available to the petitioner and the writ is liable to be dismissed on that ground alone.

6. As fairly submitted by the learned Standing Counsel for the respondent Board and as seen from the order impugned in the writ petition, dated 27.04.2000, no notice was issued to the petitioner before taking steps to cancel the allotment made to the petitioner. The only correspondence emanated from the respondent Housing Board after the initial allotment letter, dated 31.10.1997, was the impugned notice of cancellation of allotment, dated nil.12.1999. Even though the notice of the cancellation of allotment was made on nil.12.1999, it was not dispatched till 09.11.2000 and it was received by the petitioner on 12.02.2000. Even before the said order was dispatched, already notification was published in the newspapers on 02.02.2000 notifying stands of re-allotment of the house as per Regulation 28 (iii) of the Regulations 1997. The cancellation of allotment would come into force only when it is dispatched and received by the recipient. Even before the cancellation of allotment was expressed illegal, it amounts to arbitrary and illegal by the respondent Housing Board being the statutory authority. Further more, as noticed above, no further notice was issued to the petitioner before the allotment was cancelled.

7. In the decisions relied upon by the learned Standing Counsel for the respondent Housing Board, it is seen that except in one case where facts are not clear, in all cases only after giving final notice or a further opportunity to pay the balance amount payable, adverse decision to cancel the allotment made was taken in W.P.No.17992 of 2007. Similarly, the allottee therein also did not pay the subsequent installments. There was a categorical stand of the respondent Housing Board that after giving final notice, as the petitioner did not respond, the allotment was cancelled and the same was informed to the petitioner. Even before the final notice, the petitioner was informed through various correspondence of the escalation of cost and the requirement to pay higher amount. Since the petitioner did not respond, notification, dated 13.04.2004, was issued finally requesting the petitioner and similarly placed

persons to complete the formalities and take over possession of the houses within a period of one (1) month. In spite of that the allottee therein did not respond and, therefore, by proceedings, dated 04.08.2004, the allotment was cancelled. Having regard to the said factual stand, the Court held that despite being given sufficient time to pay the due amount and despite issuance of paper notification calling upon the petitioner and similarly placed persons to pay the due amount, the petitioner failed to respond to the same and pay the due amount and, therefore, no exception can be taken to the action of the respondent Housing Board in cancelling the allotment and forfeiting the amounts as per the conditions of allotment. In W.P.No.15726 of 2005, the cancellation of allotment was under challenge. By way of an interim order, dated 20.07.2005, this Court directed that since there are several vacant houses available and if the petitioner submits a representation for allotment of the vacant houses or for refund of amount, a representation be submitted and such representation should be considered and to pass appropriate orders within a period of two (2) months from the date of receipt of such representation. In pursuance to the interim order, the representation was considered and the EMD amount was refunded to the petitioner and she was also informed that no houses are available at Karimnagar to consider her request for allotment of alternate house. The said allotment was of knowledge of the petitioner.

8. Having regard to the said facts, the issue whether the petitioner was entitled for allotment of a house was not gone into by this Court. In W.P.No.24786 of 2004, in spite of showing sufficient indulgence, the allottee did not avail the opportunity and did not pay the balance amount. Therefore, the allotment was cancelled. Therefore, this Court upheld the decision of cancellation of allotment. In W.P.No.11343 of 2001, the relief sought by the petitioner was not granted because specific averments were made in the counter affidavit, which were not controverted by the petitioner. Thus, as seen from the judgments relied upon by the learned Standing Counsel for the respondent Housing Board, in all cases, due opportunity was afforded before taking final decision to cancel the allotment.

9. Learned Standing Counsel also fairly submits that normally before cancellation, prior notice to make the payment and to take possession will be issued, but in the instant case, no such notice was issued. Thus, as a matter of practice, the respondent Housing Board has been adopting the principle of putting the allottee sufficiently on notice on more than one occasion and only after a final notice is issued or a notice through paper publication is issued, if a person does not respond, the allotment is cancelled. In the instant case, such procedure was not followed and no reasons are forthwith coming as to why the divisions are made in the instant case. Having regard to the fact that originally applications were made as early as in the year 1988 and sufficient amount required was paid and the lapse on the part of the petitioner cannot be viewed so seriously to take such drastic action without affording further opportunity. More over, the narration of events would also disclose that the respondent Housing Board was pre-determined to cancel the allotment made in favour of the petitioner. Thus, though the decision to cancel the allotment made was taken on 29.12.1999, the same was not communicated to the petitioner and in the meantime, as if the allotment was already cancelled, calling upon the interest of other person notification was issued. This itself shows that the respondent Housing Board was pre-determined to cancel the allotment.

10. There is no dispute with regard to the principle of law as to the scope of interference of writ Court under Article 226 of the Constitution of India in the matters concerning enforcement of terms of contract. In the instant case, as fairly stated by the learned Standing Counsel and as the events would disclose with reference to other cases relied upon by the learned Standing Counsel that before taking steps to cancel the allotment, the allottee is always put on sufficient notice and in spite of giving sufficient notice, if the allottee does not respond only, the extreme measure of cancellation of allotment was made. Regulation 22 of the Regulations 1997 also envisages such a course of cancellation only after the allottee is informed of allotment of house and ready for occupation. What is given to the petitioner on 30.10.1997 was only allotment letter of identified house in accordance with the draw of lots. No further communication was made by the respondent Housing Board informing the

petitioner that the house is ready for occupation and by entering into appropriate agreements and paying the amounts due, possession should be taken. Thus, Regulation 22 (ii) of the Regulations 1997 is appreciated only in the case where a further letter is communicated informing the petitioner of readiness of the building for occupation. In the instant case, no such information was given to the petitioner.

11. It is further seen that though a new person was identified for allotment before finalizing the terms, the petitioner's willingness to pay the balance amount was already in receipt by the respondent Board. In all fairness, the respondent Housing Board ought to have stopped in proceeding with the allotment to the new person and after considering the request of the petitioner only, such steps should have been taken, but for the reasons best known adverse decisions are taken in case of the petitioner.

12. The person who was identified in pursuant to the paper notification, dated 02.02.2000, was allotted the house and formalities were completed and as informed by the learned Standing Counsel, the said person is in possession and enjoyment of the said property. The said person is not a respondent in the writ petition. Having regard to the said fact, no direction can be issued to the second respondent, which is the Housing Board to allot the same house to the petitioner. Thus, while setting aside the order impugned in the writ petition, the respondent Housing Board is directed to provide any other alternative house available for such allotment immediately or in the near future subject to fulfillment of all the required formalities for such allotment.

13. Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 8th April, 2015

KL

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.8421 of 2000

–

Date: 8th April, 2015

KL