

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.7432 OF 2010

ORDER:

This writ petition is filed challenging the order dated 05.03.2010 in C.T.A.No.66 of 2009, passed by the A.P. Cooperative Tribunal at Hyderabad (in short "the Tribunal").

The grievance of the petitioner is that originally the petitioner came to be allotted an extent of land 1,038.88 Square yards, in Plot No.56 by the 2nd respondent-The Nandagiri Co-operative Housing Society Ltd., Hyderabad, and pursuant to which the 2nd respondent had also executed a registered sale deed dated 20.02.1995 in her favour. Petitioner also took possession of the said property. Thereafter, in 2003, petitioner found that there was a shortage of 100 to 123 square yards in the area. The petitioner approached the respondent society to conduct the survey and the Society in turn confirmed by a letter of the Secretary that there was a shortage of 100 to 123 sq.yards. After registration to the petitioner, the 2nd respondent had also registered adjacent plots bearing nos.49 and 55 in favour of 3rd parties. Alleging that there was an admitted shortage of 100 to 123 sq.yards of land, petitioner approached the Divisional Cooperative Officer, the designated authority, seeking redressal of her grievance particularly claiming compensation at the rate of Rs.30,000/- per sq. yard for the shortfall of the land. Though what has been stated in the document when the Dy. Registrar/Divisional Cooperative Officer, allowed the claim of the petitioner fixing market value the compensation payable at the rate of Rs.30,000/- per square yard and directed the same to be paid within two weeks from the date of receipt of the order dated 04.07.2009. The order came to be challenged by the 2nd respondent before the Tribunal. The Tribunal had set aside the

order of the Dy. Registrar finding as follows:

“Once the registered sale deed is executed, it is not open for the plaintiff to say that defendant society has sold the lesser extent of the property, than what was mentioned in the sale deed. There is no force on this line of agitation. She has not adduced any evidence to show the measurements are not taken when allotment was made or when the sale deed was executed. The sale deed indicates that the possession as per the sale was delivered. There is no other evidence placed before this court to say that defendant society failed to deliver the extent that was mentioned in the sale deed executed in favour of the plaintiff, Plot No.49 was sold subsequently. So by the time allotment and execution of the sale deed in favour of the plaintiff, Plot No.49 was vacant and never allotted to anybody. The sale deed was executed in 2000 i.e., 5 years after the execution of the sale deed in favour of the plaintiff. On ground the extent as per the sale deeds is available between two roads. Plot No.49 was found more in extent as per the survey report. The society has executed the sale deed only to the extent of 85 x 110. If the owner of the Plot No.49 is in occupation of more extent and encroached the site of the plaintiff, she has to raise her voice against him. But she cannot raise a claim against the society. Plaintiff can raise her claim against 3rd party in appropriate form and before appropriate authority. The learned arbitrator has erred in appreciating the contentions of both parties and failed to appreciate the documents in right perspective. So, the point No.1 and 2 is answered in favour of the appellant against the respondents.”

Having considered the submissions made by both the learned counsel, I do not find any reason to interfere with the order of the Tribunal as the scope of enquiry before the Dy. Registrar cannot extend to the determination of rival claims with regard to extent of land. Document executed in favour of the petitioner had mentioned the extent of the plot with the boundaries. Petitioner was expected to ensure before the execution of the document by seeking measurement of the site. Petitioner having not made such request and verification at this point of time cannot approach the society for alleged shortfall. Even assuming that there was some element of mistake at the point of

registration petitioner ought to have taken steps within reasonable time. At any rate, the Tribunal had rightly observed that the grievance, if any, of the petitioner would be with the adjacent owners and it cannot be with the Society. Adjacent owners were not parties before the lower authorities. The reasoning of the Tribunal cannot be found fault and accordingly, I see no merit in the writ petition. Accordingly the writ petition is liable to be dismissed as there is no violation of principles of natural justice or non-appreciation of vital and relevant facts by the Tribunal in considering the orders of the Deputy Registrar/Divisional Cooperative Officer.

Accordingly, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous petitioner, if any, pending shall also stand dismissed. The observations made in this writ petition are only for limited purpose of examining the order of the Tribunal and cannot be construed as expressing any opinion on the rights of the petitioner, if any.

CHALLA KODANDA RAM, J

Dated: 07.12.2015

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