

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 23879 of 2011

ORDER:

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Heard learned counsel for the petitioners and learned standing counsel for A.P. Housing Board appearing for the respondents. With the consent of the parties, the writ petition is disposed of at the admission stage itself.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in not executing a registered document in respect of H.No.188 situated at MIG.II, IX Phase, Kukatpally, Hyderabad, and adjacent narrow strip of land to an extent of 97.23 square yards in favour of the 2nd petitioner in spite of allotment and payment of consideration, as illegal and arbitrary.

The averments in the affidavit filed in support of the writ petition would show that the 2nd respondent issued a letter dated 06.02.2001 to the 1st petitioner stating that he was allotted H.No.188 situated at MIG.II, IX Phase, Kukatpally, Hyderabad, subject to certain terms and conditions. Pursuant to the same, the 1st petitioner complied with all the formalities as set out in the said letter and possession of the house was delivered to him on 14.06.2002. Meanwhile, the Government of Andhra Pradesh took a decision to sell stray pieces of land admeasuring less than 100 square yards, which are not suitable for constructions, to the adjacent house owners/allottees. Thereupon, the 1st petitioner made applications on 22.05.2001

and 12.12.2001 to the 2nd respondent offering to purchase land to an extent of 97.23 square yards which is adjacent to his house. The 1st petitioner also made an application to the 2nd respondent seeking issuance of NOC for the purpose of obtaining loan to meet the balance sale price, by mortgaging the house to any of the financial institutions, and also transfer of title in respect of the house in favour of the 2nd petitioner. Basing on the said application, the 2nd respondent issued NOC on 03.06.2002 stating that the house was allotted in favour of the 1st petitioner and also undertaking to transfer the title in respect of the house in favour of the nominee i.e., the 2nd petitioner. Thereafter, the balance sale consideration along with interest was paid by way of a demand draft dated 17.08.2002. The 1st petitioner was also directed to pay a sum of Rs.2,91,690/- towards cost of the excess land @ Rs.3,000/- per square yard. As the basic value of land in IX Phase of KPHB Colony i.e., Rs.1,000/- per square yard was taken into consideration on the earlier occasion, the 1st petitioner requested the 1st respondent to adopt the same procedure to his case. As there was no proper response, the petitioners paid a sum of Rs.2,91,690/- by way of a demand draft bearing No.759098 dated 12.05.2004 drawn on Global Trust Bank Limited. In spite of several representations made by the petitioners expressing their willingness to obtain a registered sale deed, till date no steps were taken by the respondents either to specify the non-judicial stamps required for registration or to send any communication. Hence the present writ petition.

A counter came to be filed by the respondents admitting

the allotment of the house in favour of the 1st petitioner, payment of the entire sale consideration, issuance of NOC in favour of the 1st petitioner on 04.02.2002, transfer of allotment of the house in favour of the 2nd petitioner on 30.12.2002 and also issuance of a letter dated 29.05.2003 calling upon the petitioners to pay the excess area cost of Rs.2,91,690/-. But however, it is stated that though a reminder dated 29.05.2003 was issued to pay the excess area cost of Rs.2,91,690/-, the petitioners did not come forward for registration of the house. It is also stated that the 2nd petitioner represented the matter only on 18.12.2010 i.e., after lapse of six years and sought registration of the house, by which time, the value of the land in the vicinity got increased to Rs.10,000/- per square yard and as such a decision was taken to revise the land cost @ Rs.30,000/- per square yard as per item (2) of G.O.Ms.No.6 dated 29.03.2011. It is thus said that the petitioners have to pay Rs.26,25,210/- after adjusting the land cost of Rs.2,91,260/- for getting the same registered.

During pendency of the writ petition, the 1st petitioner died on 11.01.2014.

It is to be noted that in response to a notification issued by the respondent Housing Board, the 1st petitioner applied for allotment of a house in MIG-II, Phase IX, Kukatpally vide application No.4170 dated 05.05.1995 duly remitting the earnest money deposit of Rs.31,600/- vide D.D.No.719463 dated 05.05.1995 under Government Servants Category. Later on, the 2nd respondent allotted H.No.188 situated at MIG.II, IX

Phase, Kukatpally, Hyderabad, vide his letter No.4170/EEWD/EM3/KKP/Ph.IX/95 dated 07.10.1995, at a tentative cost of Rs.3,16,000/- and requested the petitioner to pay 2nd and 3rd down payments of Rs.31,600/- each. Accordingly, the 1st petitioner is said to have paid Rs.94,800/- on 21.11.1996, pursuant to which, an agreement of sale came to be executed on 06.12.2001 and on the even date, the 1st petitioner took physical possession of the house. Having regard to his health condition, the 1st petitioner submitted a nomination form in favour of his son the 2nd petitioner herein at the time of submission of the original application for allotment of the house. Subsequently, on a request made by the 1st petitioner, No Objection Certificate was issued on 04.02.2002 enabling him to obtain bank loan and allotment of the house was transferred in favour of the 2nd petitioner on 30.12.2002. It is admitted in the counter that the entire cost of the house has been paid.

It is also to be noted that land to an extent of 97.23 square yards is situated on the eastern side of the house of the petitioner for which the respondents collected an amount of Rs.2,91,690/- @ Rs.3,000/- per square yards from the 1st petitioner. It is not in dispute that the cost of excess land and registration charges were paid by the petitioners in the year 2003 itself. But for reasons best known, the respondents did not register the house. On 18.12.2010, when the 2nd petitioner approached the respondents for registration of the house, the respondents are said to have demanded him to pay

Rs.26,25,210/- after adjusting the excess land cost, in view of G.O.Ms.No.6 dated 29.03.2011.

The issue that crops up for consideration is whether the respondents were justified in demanding the petitioners to pay Rs.26,25,210/- towards cost of the excess land. The learned standing counsel for the Housing Board is not able to place on record any authority or rule position to show that the allottee has to pay the value of the property existing as on the date of registration. On the other hand, the learned counsel for the petitioners placed before the Court a photo copy of G.O.Ms.No.6 Housing (HB-II) Department dated 29.03.2011, which was referred to in the counter filed by the respondents. A reading of the said G.O. would show that the stray pieces of land, which cannot be used by APHB in any manner or cannot be used for other purpose or where there is no access other than through allottees' land, shall be sold to the adjacent house allottees as per the basic value as on the date of handing over the houses plus 12% simple interest till the date of payment. The record amply establishes that an amount of Rs.83,000/- towards registration charges of the house and an amount of Rs.2,91,690/- towards cost of excess area of 97.23 square yards as demanded by the respondents were paid in the year 2003 itself. Hence, even as per G.O.Ms.No.6 dated 29.03.2011, the petitioner is not liable for payment of any amount as demanded by the respondents. In the absence of any authority or rule position being placed by the learned standing counsel for the Housing Board justifying their demand of Rs.26,25,210/-, the request of the petitioners seeking a direction for registration of the house and the adjacent land can be accepted.

Accordingly, the Writ Petition is allowed. The respondents are directed to execute a registered sale deed in favour of the 2nd petitioner, being nominee of the 1st petitioner, in respect of H.No.188 situated at MIG.II, IX Phase, Kukatpally, Hyderabad, and also the adjacent narrow strip of land to an extent of 97.23 square yards, within a period of twelve (12) weeks from the date of receipt of a copy of the order. There shall be no order as to costs.

Consequently, miscellaneous petitions if any pending in the writ petition shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

11th September, 2015
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