

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.11720 OF 2004

ORDER:

The 1st petitioner filed the instant writ petition for Certiorari to call for the records leading up to and inclusive of order in O.A. No.119 of 2003 dated 20.03.2004 of 3rd respondent and to quash the same as illegal, arbitrary and without jurisdiction.

The 1st petitioner died during the pendency of the writ petition. Petitioners 2 and 3, his wife and daughter, have been impleaded as petitioners.

The 1st petitioner is a member of Takkellapadu Cooperative House Building Society Limited, Takkellapadu, Pedakakani Mandal, Guntur District/ 1st respondent. The 1st respondent Society is a body registered under the A.P. Cooperative Societies Act, 1964 (for short 'the Act'). The main object of 1st respondent society is to acquire, develop land into plots and facilitate for construction of houses by the members of 1st respondent society. The 1st respondent in furtherance of its object purchased an extent of Ac.12-00 of land for allotment as plots to the members of the 1st respondent. The 1st respondent allotted plot bearing No.A-42 to 1st petitioner. 1st petitioner claims to have paid the total consideration of Rs.8,442/- to 1st respondent society. It is the case of 1st petitioner that the allotment refers to consideration payable as Rs.8,442/- and there is no separate agreement between the parties for payment of additional amount under any of the heads including development

charges. The 1st petitioner claims to have got possession of allotted plot A-42.

While matters stood thus, on 03.09.2002, 1st respondent society called 1st petitioner to pay a sum of Rs.22,372/- towards additional development charges and further a sum of Rs.719/- towards balance cost of Plot A-42. 1st petitioner objected the levy of additional sum, as illegal and arbitrary.

1st respondent through letter dated 24.09.2002 cancelled the allotment of Plot A-42 and ordered refund of sale consideration paid by petitioner vide Cheque No.820931 dated 24.09.2002 for a sum of Rs.16,402/-. 1st petitioner refused to accept the refund tendered through cheque dated 24.09.2002 and preferred claim petition No.5/2002-2003 before the 2nd respondent under Section 61 of the Act. On 12.05.2003, the 2nd respondent set aside the cancellation orders dated 24.09.2002. The 1st respondent society filed O.A. No.119 of 2003 before the 3rd respondent against the Award dated 12.05.2003. According to petitioner, the 3rd respondent without looking into the original records, case of respective parties and examining the depositions, allowed O.A. No.119 of 2003 and set aside the Award dated 12.05.2003. Hence, the writ petition.

It is the case of 1st respondent that the total cost of plot A-42 is Rs.8,719/-. 1st petitioner paid Rs.8,000/- towards sale consideration and a sum of Rs.719/- is payable to 1st respondent society. On 28.10.1997, the 1st respondent society demanded 1st

petitioner to pay Rs.719/- and initial development charges at Rs.10/- per square yard. For non-payment of development charges, the allotment of 1st petitioner was cancelled. It is alleged that prior to cancellation, an opportunity to pay the amount demanded was given. As the 1st petitioner did not respond, the general body was compelled to resolve in the meeting held on 24.09.2002 to cancel the allotment of Plot A-42. Bye-law No.12 (e) of Society enables the Society to recover funds from members towards such charges as are spent by the Society. The resolutions passed on 16.09.1997 and 24.09.2002 are well within the jurisdiction and no exception can be taken.

The 2nd respondent filed counter affidavit supporting 1st petitioner. The stand of 2nd respondent is that allotment of plots is not uniform and if any amount is due from a member, the 1st respondent society ought to have raised dispute under Section 61 of the Act. But cancellation of allotment of plot made in 1985 is arbitrary, illegal and without jurisdiction. The 2nd respondent alleges that the Tribunal did not appreciate the controversy in right perspective, erroneously reversed the Award, and supports the 1st petitioner for setting aside the order of 3rd respondent dated 20.03.2004.

Mr.P.Sinivas appearing for petitioners contends that the order of Tribunal suffers from material illegality and irregularity, for the 3rd respondent without confining the consideration of appeal on the material produced before the 2nd respondent, received various documents without opportunity to 1st petitioner, considered the

documents, recorded findings which are unsustainable and impermissible in law. On the documents, considered and relied upon by the respondent society, he contends that there is no proof of dispatch of reminder notice dated 28.10.1997 to 1st petitioner or served on 1st petitioner. Therefore, it cannot be held that in spite of receipt of such notice, the 1st petitioner failed to pay the demanded amount thereby warranting cancellation of plot A-42. He contends that to the extent of allotment, receipt of consideration etc. the correspondence was under certificate of posting and presumption to the limited extent of having sent the correspondence to the address and the addressee can be drawn and knowledge of it can be inferred. The material considered for passing cancellation resolution was bereft of minimum details viz. address etc. and therefore cannot and could not be termed as received by 1st petitioner. The resolution dated 03.09.2002 and communication dated 10.10.2002 of said resolution are without basis and as rightly pointed out by the 2nd respondent that if any dispute on the amount payable by a member towards allotment of plot, in fact, had arisen, the same ought to be resolved by raising a claim before the 2nd respondent. Order of 3rd respondent has virtually accepted objections raised by the 1st respondent society without justification and proof, as required by law. In support of his case, Mr. Srinivas relies upon the following findings recorded by 2nd respondent.

“Defendant had also informed that any failure to repay Rs.22,375/- would result in the cancellation of allotment

of A42 and refund of plot advance and development charges with interest @ 12% . Defendant in its letter dated 24.09.2002 had informed about the cancellation of allotment of A42 and refund of plot A42 of plaintiff maintainable on facts and law. Plaintiff in his examination-in-chief by his affidavit dt.1-2-2003 had claimed that the cancellation of allotment of A42 plot and refund of his plot advance of Rs.28,100/- including interest in letter dated 24.9.2002 of defendant are infructuous without jurisdiction, void and unenforceable in law. Demand notice dated 28.10.1997 of defendant after a lapse of over 12 years from the date of allotment on 3-6-1985 for payment of betterment charges of Rs.4969/- including interest demand notice dated 3-9-2002 of defendant for payment of betterment charges of Rs.22,373/- and letter dated 24.9.2002 of defendant on the cancellation of allotment of his A42 plot are not only beyond By law.No.41 of defendant, but also beyond the principles of reasonable opportunity and natural justice. Plaintiff also claimed that the letter of allotment, dt.3.6.1985 of defendant had contained no terms and conditions on the cost of plot and betterment charges. Defendant had admitted these facts during the course of examination-in-chief and cross-examination. Defendant in his examination-in-chief stated that the plaintiff has to pay balance of plot value of Rs.719/- which is barred by limitation. Defendant in his letter dated 2-5-2003 had refused to the payment of balance plot advance of Rs.719/- sent by Pay Order for Rs.720/- with No.AB/POPCOM/B, dt.30.4.2003 of Andhra Bank, Koretipadu, Guntur on the plea of existence of no plot for him. General meetings and committee meetings on fixation of value of plots, betterment charges and cancellation of plots are infructuous, void and unenforceable in law for want of presidency of meetings and agenda. Resolution dt.14.12.1992 of Managing Committee without presidency on fixation of rate @ Rs20.50 per sq. yard after allotment of plot on 3.6.1985 is not only barred by limitation but also violation of By law 11 of the defendant. Defendant had collected betterment

charged without collection of site value from 81 members, as against 90 members. Collection of site value and betterment charges are not uniform according to the extent of site. Hence cancellation of allotment of A42 plot is liable to be set aside with costs of Rs.500/- under section 62(4) of A.P.C.S.Act,1964.”

Mr. Sinivas further challenges the findings recorded by the 3rd respondent on the ground that material which was not before the primary authority cannot and could not be considered by the 3rd respondent. All the findings recorded by the 3rd respondent cannot be considered as findings recorded on evidence placed by the parties at the first instance before primary authority. He alternatively contends that to bring additional material on record before the 3rd respondent/Tribunal, procedure ought to have been followed and thereafter opportunity ought to be afforded to the 1st petitioner as well. The findings of 3rd respondent are *ipse dixit* cannot be supported even by reference to the additional material brought on record and prays for setting aside the order in O.A. No.119 of 2003 of the 3rd respondent.

Per contra, Mr.Bodduluri Sinivas Rao contends that the findings of fact recorded by the Tribunal are based on evidence available on record and the jurisdiction of this Court is supervisory under Articles 226 and 227 of the Constitution of India. This Court ought not to be like a Court of Appeal, re-examine the evidence and record findings independently on the material available on

record. He relies upon decision in *Shama Prashant Raje v. Ganpatrao*¹.

“Such Tribunal has committed a manifest error by misconstruing a document; or (ii) that on the materials on record a reasonable man could not have come to the conclusions reached by the Tribunal; or (iii) the Tribunal has ignored relevant material: or (iv) taken into consideration inadmissible material, held, High Court would be fully justified in interfering with the findings of the inferior Tribunal- Further held, High Court may be justified in interfering where questions on which findings have been given can be held to be mixed questions of fact and law- Rent Controller, after examining terms of lease deed and an agreement between tenant and a third party, giving a reasoned order finding appellant tenant to be a habitual defaulter and also guilty of sub-letting- Rent Controller allowing respondent landlord's application seeking termination of tenancy under Cls.13(3)(ii), (iii) and (vi) of C.P. and Berar Rent Control order- Appellate authority setting aside said order finding that respondent had not established his case.”

Mr.Srinivas Rao, to the objection of petitioners that the 3rd respondent considered new material and the conclusions drawn by the Tribunal are not supported by evidence, submits that the order of 3rd respondent does not show that the exhibits referred to in the order are marked and/or forming part of record of 2nd respondent. The learned counsel fairly states that the order of 3rd respondent does not throw light on the manner and mode of receipt of various exhibits referred to in the order impugned in the writ petition. He however, has placed very exhibits which were relied upon by the 3rd respondent to bring home the point that cancellation of plot is

¹ (2000) 7 SCC 522

justified in the facts and circumstances of the case, for the 1st petitioner is not only under obligation to pay sale consideration for allotment of Plot A-42, but also under obligation to pay the amount spent by 1st respondent society towards development charges.

I have heard learned counsel appearing for parties and perused the material available on record.

Now the point for consideration is whether the order of 3rd respondent is valid, based on material available on record before the Primary Authority and sustainable in law and fact?

Before adverting to the point framed for consideration, this Court finds it convenient to summarize the total circumstances leading to the cancellation of allotment of Plot A-42 by 1st respondent and proceed to examine the point.

1st petitioner admittedly is member of 1st respondent society. The object of 1st respondent society is to acquire land, develop the same into house plots, allot plots to members. The society through cooperative movement facilitates acquiring houses and house-sites by its members. On 18.08.1981, the 1st respondent society called upon the 1st petitioner to pay Rs.5,000/-. On 12.10.1981, 1st petitioner paid sum of Rs.6,440/- and Rs.2,000/- towards plot advance and development charges. There is no dispute about the receipt of these sums. On 16.8.1985, the 1st respondent society allotted plot A-42 to 1st petitioner. The 1st respondent society claims to have addressed a letter on 28.10.1997 calling upon 1st petitioner to pay a

sum of Rs.719/- and Rs.4,969/- towards development charges. A reminder, it is alleged, was sent on 05.06.2002 to 1st petitioner. The cause of action for cancelling the allotted plot is that the 1st petitioner has not paid the development charges amounting to Rs.22,372/- and also Rs.719/- towards balance sale consideration. *Prima facie*, it appears resolution canceling allotment and communication suffer from patent illegality and irregularity. From the documents produced by the 1st respondent society, it is evident that the 1st petitioner paid plot advance as well as development charges amounting to Rs.8,440/-. The 1st respondent from 1985 till the order of cancellation was communicated, did not call upon the 1st petitioner to pay any amount due towards either part sale consideration or development charges. The 1st respondent society relies upon Xerox copies for cancellation of allotment of plot and these copies do not inspire the confidence of this Court. Further as rightly pointed out by 2nd respondent, if any amount is due and payable by a member and on the quantum of amount payable by member is in dispute, the 1st respondent society ought to have raised claim before the 2nd respondent. This Court takes note of the anxiety of 1st respondent society to receive amount spent towards development charges, but the recovery shall be lawful but not planned to cancel the allotment made in the year 1985. The 3rd respondent has referred to various documents for recording its conclusions which are brought before the appellate Court. The counsel appearing for the 1st respondent society, as already noted, fairly stated that the order of 3rd respondent is silent in this behalf

and the society is not in a position to discharge the onus of having exhibited these documents before 3rd respondent. Keeping in mind the totality of circumstances, this Court is of the view that the decision relied upon by the 1st respondent is distinguishable and not applicable to the admitted fact situation of the case, secondly the findings recorded by the 3rd respondent are not based on evidence available on record before the 2nd respondent. The society failed to justify such extreme situation of cancellation of plot allotted to 1st petitioner. The order of 3rd respondent in O.A. No.119 of 2003 is set aside and the writ petition is ordered. With a view to give quietus to lis between parties and prevent 1st petitioner from availing the benefit of development without paying for development charges, this Court has heard learned counsel appearing for parties and is of the view that the petitioners shall pay development charges as referred in the affidavit with interest at 12% per annum from 2000 till the date of payment together with Rs.719/- towards balance sale consideration. Petitioners 2 and 3 are given three months from the date of receipt of copy of this order to pay the amount as directed by this Court. Thereafter, the 1st respondent society completes the transfer of allotment by way of registration etc, at the cost and expenses of petitioners 2 and 3.

The writ petition is ordered accordingly. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date:05.07.2016
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