

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.17428 of 2008

ORDER:

Seeking return of Rs.77,000/-, which was deducted while refunding the amount paid by the petitioner towards purchase of a Flat in Singapoor Class Township at Pocharam near Hyderabad, is subject matter of dispute in the present Writ Petition.

2) The petitioner herein applied for an Apartment pursuant to an advertisement published in a daily news paper vide application No.6081 dated 19.02.2004 along with a Demand Draft of Rs.5,000/- towards registration fee, in the special category of 90% down payment. In response to the application, the third respondent vide letter dated 19.02.2004 allotted a Flat in the said Township. On receipt of 90% of the cost of the Flat i.e., Rs.6,88,000/-, the second respondent asked for a further payment of Rs.10,100/- for domestic piped gas supply; and Rs.40,000/- for car-parking. The said amount was also paid by way of another D.D., dated 09.09.2004. The petitioner was allotted a Flat bearing No.MIG A.13-103, against lot No.336 through computerized random number generation method and the same was informed the petitioner vide letter dated 10.01.2005. However, on 01.03.2005, the third respondent informed through a letter that a lease-cum-sale agreement has to be executed by the petitioner and costs for registration of the said lease agreement is to

borne by the petitioner. As the petitioner was not inclined to give the Flat on lease-cum-sale agreement, he wrote a letter seeking cancellation of the allotment made. Pursuant thereto, the third respondent paid Rs.6,66,100/- vide cheque dated 10.05.2005, after forfeiting 10% of the actual cost of the Flat. Challenging the said forfeiture, the present Writ Petition came to be filed.

3) A counter came to be filed disputing the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that in view of G.O.Ms.No.62 (Housing HB.II.1) Department dated 03.12.2004, the third respondent was justified in refunding Rs.6,66,100/- by way of cheque bearing No.012442 dt:10.05.2005 duly forfeiting 10% cost of the Flat i.e., Rs.77,000/- from the total amount paid. It is not in dispute that the petitioner opted for one time payment, but if he intends to withdraw after the allotment is made, the petitioner has to forego 10% of the cost. It is further stated that the lease was given to the extent of the land to which the petitioner was entitled to and as such there is nothing wrong in asking the petitioner to enter into an agreement of sale-cum-lease. However, it is stated that within three days of the said decision, the said proposal was withdrawn, which fact was known to the petitioner. It is said that in spite of that, the petitioner never came forward to take the Flat. The fact that the board has reviewed its decision came to be published in news papers on 15.06.2005 and all

the persons who purchased the Flat got their Flats registered pursuant to the withdrawal made by the Board. Having regard to the facts in issue, it is urged that the petitioner is not entitled for the relief.

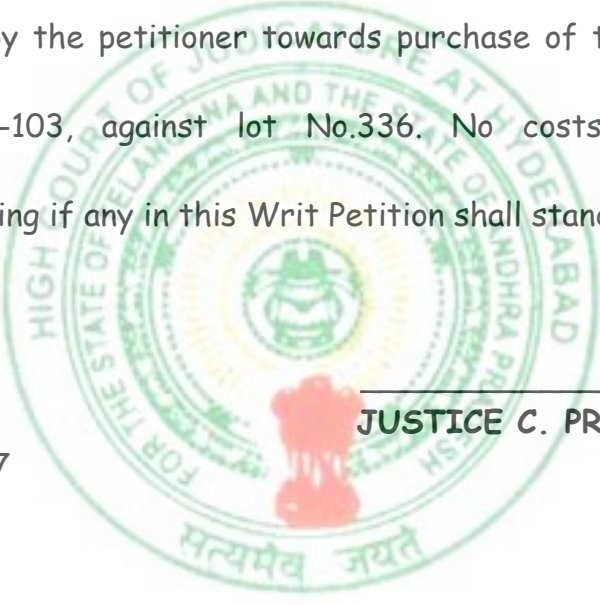
4) As seen from the record, the original advertisement does not anywhere refer to that condition that the purchasers have to enter into an agreement-cum-lease in respect of the Flats purchased by them. The record further discloses that the petitioner herein wrote a letter seeking withdrawal of the Flat on 19.03.2005. The said letter was received in the office of third respondent on the very same day. In the said letter, he categorically stated about the advertisement being silent with regard to lease of the land or Flat and also in the communications which were received by the petitioner from the office of the third respondent.

5) Since the said aspect was not mentioned at the time of the application or in the advertisement, the petitioner withdraw his candidature from the allotment of Flat. There is no dispute that advertisement is silent with regard to the said aspect. It is also not in dispute that on 15.03.2005, an advertisement came to be published in news papers with regard to the decision taken by the Board, withdrawing the proposal of Flat holders entering into an agreement of sale-cum-lease. But by then, the petitioner herein has made his application for withdrawal of his allotment. Merely because, there

was an advertisement in the news papers subsequent to the letter, disclosing the intention of the Board to withdraw the condition of asking the Flat owners to enter into a lease agreement and though the letters were written by the office of Executive Engineer, Central Division to the petitioner with regard to the payments made for parking area; payment of registration charges; and also levy of penalty in case of non payment of the amount as per the schedule, the same cannot estopp the petitioner from refusing to withdraw his letter. Infact, in none of the letters there was any reference to the decision of the Board. Even assuming that, such a decision was mentioned in the communication made subsequent to the letter of the petitioner, it would not mean that the petitioner has to recall his earlier decision of withdrawal. When it is an admitted fact that the advertisement and the communications between the petitioner and the third respondent made prior to the payment, does not anywhere indicate the existence of lease agreement and payment of lease registration charges, the decision of the petitioner in withdrawing himself from the allotment made immediately after coming to know about the said condition cannot be found fault with. Such being the position, the authorities were not justified in withholding the amount. It is not as if, that the third respondent has suffered loss or that the said Flat could not be allotted to any third person till date. In view of the dispute created by the third respondent by introducing a condition, which was not there as on the date of making of application for allotment of the

Flat, the G.Os., which are relied upon by the respondent will not apply to the case on hand. The contingency which arose herein never fell for consideration nor was it answered or referred to in the said G.Os., hence the argument that the authorities were justified in deducting the Rs.77,000/- cannot be accepted.

6) Accordingly, the Writ Petition is allowed directing the third respondent to pay an amount of Rs.77,000/- (Rupees seventy seven thousand only) which was deducted by him, while returning the amount paid by the petitioner towards purchase of the Flat bearing No.MIG A.13-103, against lot No.336. No costs. Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.



JUSTICE C. PRAVEEN KUMAR

Dt: 05.09.2017

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