

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.8700 and 8701 of 2003

COMMON ORDER:

Heard Sri M.V.Raja Ram, Advocate appearing for Sri Mirza Nisar Ahmed Baig, counsel for petitioners and Sri L.Prabhakar Reddy, Standing Counsel appearing for respondents.

2. The 1st petitioner in both Writ Petitions was a member of the 1st respondent-Jubilee Hills Cooperative House Building Society (for short 'the Society') from 30.10.1971.

3. After he paid certain amounts as demanded by the 1st respondent-Society, a draw was held on 20.06.1982, in which 1st petitioner was allotted plot No.219 in Block-III by the 1st respondent-Society, which is of an extent of 740 sq. yards. The said plot was subsequently registered in his favour on 30.06.1986.

4. Prior thereto, since the allotment letter did not indicate the extent of the plot allotted to 1st petitioner, he filed ARC No.53 of 1984 before the 2nd respondent on 09.08.1984 under Section 61 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') alleging that there was discrimination in allotment of plots by the Managing Committee of the Society, and that he was deliberately allotted a smaller plot, while others were allotted larger plots. He questioned the stand

taken by the Society that the then Hyderabad Urban Development Authority (HUDA) had demarcated the plots, that such demarcation was adopted by the 1st respondent, and contended that the said Authority has no business to demarcate the plots without the consent of the General Body, of which there is no evidence.

5. Counter affidavit was filed by the 1st respondent-Society before the 2nd respondent disputing these allegations and contending that six categories of plots were designed by the HUDA and that the said work was entrusted to the said Authority by Resolution dt.11.01.1981 of the General Body of the 1st respondent-Society. The allegations levelled by the 1st petitioner were denied and it was contended that having accepted plot No.219 in August, 1984, 1st petitioner could not have filed the said ARC.

6. 1st petitioner then filed I.A.No.01 of 1985 to amend the original prayer in the ARC by seeking a direction to set aside the orders passed by the Managing Committee of the 1st respondent-Society inducting 200 members, in excess of the share capital from time to time, without the approval of the General Body of the Society; to set aside the illegal sales and transfer of plots made by some of the members; and also sought allotment of plot in Block No.I or Block No.II in lieu of plot No.219 in Block No.III, which was allotted to him.

7. 1st petitioner also filed I.A.No.2 of 1985 in ARC No.53 of 1984 seeking permission to deliver the accompanying interrogatories to the respondents and I.A.No.3 of 1985 seeking permission to submit and urge additional grounds.

8. Counter affidavits were filed to these applications by the 1st respondent-Society.

9. On 14.08.1985, by a common order, I.A.Nos.1, 2 & 3 of 1985 were dismissed by the 2nd respondent.

10. Against the said common order, 1st petitioner filed CTA Nos.37, 38 and 39 of 1985 before the X Assistant Judge, City Civil Court, Hyderabad.

11. By common order dt.24.07.1989, these three appeals were allowed, and the 2nd respondent was directed to enquire into I.A.No.2 of 1985 afresh in the light of the bye-laws of the 1st respondent-Society. I.A.No.1 and 3 of 1985 were allowed.

12. Thereafter the Sub-Registrar of Cooperative Societies (Housing), Hyderabad was appointed as Arbitrator to try ARC.No.53 of 1984 on 25.11.1989.

13. The 1st petitioner then filed I.A.No.1 of 1990 on 20.01.1990 seeking allotment of 760 sq. yards additional land abutting on the northern side of plot No.219 in Block No.III allotted to him by the Society, and I.A.No.2 of 1990 for a

direction to the 1st respondent not to allot this plot to anybody else.

14. The matter was later entrusted to the 2nd respondent by the Cooperative Department and he ultimately passed order on 15.04.1991 in ARC.No.53 of 1984 declaring that the 1st petitioner is entitled to additional land of 760 sq. yards @ Rs.25/- per sq. yard as per old rate mentioned in Ex.A7 from out of the vacant land of the Society lying on the Northern side of Plot No.219 in Block No.III.

15. The 1st petitioner filed a petition on 27.04.1991 before the 2nd respondent seeking certificate under Section 70A regarding the Award in ARC.No.53 of 1984 and the said certificate was also issued to the 1st petitioner on the same day.

16. In the meantime, on 03.05.1991, 1st respondent-Society filed CTA No.5 of 1991 before the IX Assistant Judge, City Civil Court, Hyderabad under Section 76 of the Act challenging the order dt.15.04.1991 in ARC No.53 of 1984 of 2nd respondent.

17. Though there was a short delay of five days in filing the appeal, the said delay appears to have been condoned.

18. I.A.No.409 of 1991 was filed by the petitioner-Society in CTA No.5 of 1991 seeking suspension of the award passed in ARC No.53 of 1984.

19. The said application was opposed by the 1st petitioner.

20. On 04.07.1991 the said I.A.No.409 of 1991 was dismissed by the IX Assistant Judge, City Civil Court, Hyderabad.

21. The 1st petitioner then filed EP.No.71 of 1991 before the IX Assistant Judge, City Civil Court, Hyderabad invoking Section 70A of the Act to execute the Award dt.15.04.1991 in ARC No.53 of 1984.

22. The Society filed W.P.No.9942 of 1991 before this Court challenging the order dt.04.07.1991 in I.A.No.409 of 1991 in CTA No.5 of 1991.

23. In the meantime, possession of the plot admeasuring 760 sq. yards on the Northern side of Plot No.219 in Block No.III was delivered to the 1st petitioner by the Court Bailiff attached to the Court of the IX Assistant Judge, City Civil Court, Hyderabad.

24. Having regard to this development, W.P.No.9942 of 1991 was disposed of on 21.10.1991 by this Court directing both parties to maintain *status quo* as on that day. The IX

Assistant Judge, City Civil Court, Hyderabad was directed to decide CTA No.5 of 1991 within a period of six (06) months.

25. On 22.06.1992, the IX Assistant Judge, City Civil Court, Hyderabad dismissed CTA No.5 of 1991 observing that in spite of several opportunities having been given to the 1st respondent-Society by the 2nd respondent-Arbitrator in ARC.No.53 of 1984, they did not produce any material and did not answer the interrogatories and also they did not cooperate by stating their stand, though Advocates were hired by it.

26. Challenging this judgment in CTA.No.5 of 1991 dt.16.12.1993, the 1st respondent-Society filed W.P.No.19504 of 1993 before this Court.

27. No explanation is given in the affidavit filed in support of the W.P. No.19504 of 1993 about the delay in filing the said Writ Petition more than 1½ years after the order dt.22.06.1992 in CTA.No.5 of 1991, except stating that the award passed by the Arbitrator in ARC, as confirmed by the Appellate Court in CTA, was contrary to law.

28. A third party, by name Smt Ravathi Ramchandran, filed W.P.No.5633 of 1993 claiming plot No.212-H in Block No.III challenging the order dt.22.06.1992 in CTA.No.5 of 1991.

29. On 16.11.1998 common order was passed in both the Writ Petitions No.5633 and 19504 of 1993 stating that disputed questions arise for consideration, which a Cooperative Tribunal constituted under the A.P. Cooperative Societies Act, 1964 by then can decide, and the parties ought to approach the said Tribunal, which should dispose of the matter within four months from the date of filing of the appeals. This Court however specifically noted the contention of the 1st petitioner that this order would not prejudice his right to agitate the ground of bar of limitation.

30. Subsequently, Rev.WP.MP.No.5168 of 1999 was filed by the 1st respondent-Society to review the said order on the ground that while disposing of those writ Petitions, the order dt.22.06.1992 was not set aside.

31. This plea was accepted by this Court on 25.02.1999 and review petition was allowed specifically setting aside the order dt.22.06.1992 in CTA.No.5 of 1991 and again stating that all the points raised by the parties would be considered in the appeals to be filed by them.

32. Thereafter, CTA No.57 of 1999 was filed before the A.P. Cooperative Tribunal by the 1st respondent-Society and a Cross Appeal No.167 of 1999 was filed by the legal heirs of the 1st petitioner.

33. Ultimately by order dt.13.11.2002, CTA No.57 of 1999 was allowed and the award dt.15.04.1991 in ARC No.53 of 1984 was set aside. Consequently, Cross Appeal No.167 of 1999 was dismissed.

34. Though specific contention was raised by the legal heirs of the 1st petitioner in the written submissions filed by them in CTA No.57 of 1999 that the appeal filed by the 1st respondent-Society is barred by limitation, neither was an issue framed on that point by the Tribunal nor was any finding given thereon. The Tribunal proceeded to hold that relief, which was granted by the Arbitrator, was outside the scope of the claim made by the 1st petitioner, though it noted that the 1st petitioner had filed I.A.No.1 of 1990 requesting the Court to allot 760 Sq. Yards on the Northern side of the Plot No.219, which was already allotted to 1st petitioner. He observed that the Arbitrator was carried away by the conduct of the 1st respondent-Society in not producing the records, answering the interrogatories and dragging on the matter and that the Arbitrator had acted arbitrarily in granting the relief to the 1st petitioner. He mentioned that certain persons to whom the area which is now claimed by the 1st petitioner was allotted were not impleaded though said allotment had been made in 1982.

35. Assailing the said order, the petitioners who are the legal heirs of the deceased-1st petitioner, filed W.P.No.8700 of

2003. They also filed W.P.No.8701 of 2003 challenging the order dt.13.11.2002 dismissing the Cross Appeal No.167 of 1999.

36. The principal contention of the counsel for petitioners is that the ARC No.53 of 1984 was allowed on 15.04.1991 and when the 1st respondent filed CTA No.57 of 1999 on 30.03.1999 challenging the award in ARC No.53 of 1984, there was no application for condonation of delay in filing the CTA, nor was any reason assigned for the delay in filing the said appeal, particularly when the statute fixed only 60 days for preferring the appeal.

37. In its order dt.16.11.1998 in W.P.Nos.5633 and 19504 of 1993, this Court specifically permitted the 1st petitioner to agitate the point of limitation and reiterated the same in the order dt.25.02.1999 in Rev.W.P.MP.No.5168 of 1999 by directing that all points raised by the parties would be considered by the Cooperative Tribunal.

38. When such a contention about bar of limitation for filing the appeal was specifically raised in the written submission by the petitioners, the Tribunal committed grave error of jurisdiction in not framing a point on the said issue and in not deciding it. It has thus failed to exercise the jurisdiction vested in it making the said order amenable to quashing by a Writ of Certiorari.

39. Though other submissions were also made about the conduct of the 1st respondent-Society, I am not inclined to go into the said points and I would consider only the plea of limitation raised by the petitioners.

40. Sri L.Prabhakar Reddy, Standing Counsel for 1st respondent however sought to sustain the orders passed in CTA.No.57 of 1999 and Cross Appeal No.167 of 1999 by contending that this Court in its order dt.16.11.1998 in W.P.Nos.5633 and 19504 of 1993 permitted the parties to file appeals and since appeals were filed as directed by this Court, the issue of limitation would not be of any relevance. He pointed out that the order dt.16.11.1998 in these Writ Petitions was modified on 25.02.1999 in the Rev.WP.MP. 5168 of 1999 and the appeal was filed on 30.03.1999, and therefore, it cannot be said that the appeal was time barred. He further contended that there is a merger of the order passed in ARC in the order dt.22.06.1992 in CTA No.5 of 1991, that the said order came to be merged in the order dt.16.12.1993 in W.P.No.19504 of 1993 and also in the order dt.25.02.1999 in Rev.WP.MP.No. 5168 of 1999, and therefore there is no delay. Apart from that, he also contended that in 1988 itself certain people who were allotted the land to the Northern side of the petitioner's plot No.219 as was stated in the counter affidavit filed in I.A.No.258 of 1999 in CTA No.57 of 1999, were not impleaded by petitioners in the ARC.

41. I have noted the contentions of both sides.

42. It is true that this Court granted liberty to the parties to file appeals before the Cooperative Tribunal in its order dt.16.11.1998 in W.P.Nos.5633 and 19504 of 1993. In the said order itself, this Court recorded the contention of the counsel for 1st petitioner that it would be without prejudice to the right of the 1st petitioner to agitate the ground of limitation.

43. The said order stood merged in the order dt.25.02.1999 in Rev.WP.MP.No. 5168 of 1999, but this order also permitted the parties to raise all points and the Cooperative Tribunal was directed to deal with them.

44. In neither of these orders, the Court had stated that any appeals filed by the parties would be treated as filed within time automatically. Having permitted the plea of limitation to be urged, it has to be understood that the said plea was also to be decided by the Cooperative Tribunal and it cannot be presumed that this Court did not wish the delay in filing of the CTAs to be ignored or overlooked, or that it intended to extend the time for filing appeals, which by that time were time barred.

45. Admittedly when the order in ARC No.53 of 1984 dt.15.04.1991 was being challenged on 30.03.1999 in CTA

No.57 of 1999 by the 1st respondent-Society, it was for the 1st respondent-Society to seek condonation of delay in filing that appeal, but there is no pleading or application filed by it in that regard. Admittedly, such appeals have to be filed under Section 76 of the Act within 60 days from the date of communication to the party of the decision of the Arbitrator(*Sub-Section (3) of Sec.76*). This equally applies to the CTA No.167 of 1999 preferred by petitioners.

46. Thus, *prima facie*, the appeal preferred by the 1st respondent-Society as well as the Cross-Appeal No.167 of 1999 preferred by the 1st petitioner were both barred by limitation under Section 3 of the Limitation Act, 1963 and a Court, like the Cooperative Tribunal, is expected to consider the plea of limitation, whether or not such a plea is raised by any party.

47. In the present case, in the written arguments filed by the 1st petitioner before the Cooperative Tribunal, the plea of bar by limitation was specifically raised. This plea assumes importance because though initially the award dt.15.04.1991 in ARC.No.53 of 1984 was confirmed in CTA No.5 of 1991 on 26.02.1992, this was challenged 1½ years later on 16.12.1993 in W.P.No.19504 of 1993 by the 1st respondent-Society and though the appeal CTA No.57 of 1999 was filed pursuant to the order passed in

that Writ Petition, it was incumbent upon the 1st respondent-Society to explain the delay between 11.05.1992 and 16.12.1993.

48. Having regard to this fatal defect in the appeal preferred by the 1st respondent-Society i.e., CTA No.57 of 1999, the Cooperative Tribunal ought to have dismissed the appeal outright without going into the merits of the contentions raised by the parties. But as stated above, it not only did not frame any issue on the point of limitation, but did not decide the said issue anywhere in its order. This is a patent error apparent on the face of the record in the common order dt.18.04.2003 passed by the Cooperative Tribunal in CTA No.57 of 1999 and in Cross Appeal No.167 of 1999.

49. In this view of the matter, the pleas raised on merits as to merger or as to the non-impleadment of parties by the Society need not be gone into, since its' very appeal was not maintainable as it was time barred.

50. As regards the plea of the 1st respondent that the land claimed by the 1st petitioner was already allotted to other members is concerned, this also cannot be countenanced, because at no point of time did the Society make available the name of person or persons or

members who were allotted this area. Further, in the counter affidavit filed in I.A.No.1 of 1990 in ARC No.53 of 1984, the 1st respondent-Society took a stand that the land situated to the Northern side of Plot No.219 in Block No.III claimed by the 1st petitioner was kept as open space and could not have been allotted to anybody including the 1st petitioner.

51. Having suppressed the said fact of alleged allotment to others of the 760 sq. yards to the north of plot No.219 in Block III, the Society cannot be allowed to take advantage of its own wrong and deny the 1st petitioner the benefit of award in ARC No.53 of 1984 which would stand confirmed, if CTA No.57 of 1999 is held to be barred by limitation. Any such later allotment would be *lis pendens* and can only be subject to these proceedings. Once W.P.No.8700 of 2003 is allowed, such allotment would get nullified.

52. Accordingly, WP.No.8700 of 2003 is allowed and the order dt.13.11.2002 in CTA No.57 of 1999 is set aside; CTA No.57 of 1999 is dismissed as time barred; and consequently the award in ARC No.53 of 1984 dt.15.04.1991 passed by the 2nd respondent is confirmed.

53. Since Cross Appeal No.167 of 1999 filed by the petitioners also suffered from the same defect of bar of limitation as CTA No.57 of 1999 filed by the 1st respondent-Society, Cross Appeal No.167 of 1999 is also dismissed and consequently, W.P.No.8701 of 2003 is dismissed. No costs.

54. Consequently, miscellaneous petitions pending, if any, in both the Writ Petitions shall stand dismissed.

M.S.RAMACHANDRA RAO, J

30th August, 2017.
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