

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.4876 of 2009

ORDER :

The petitioner as well as respondent nos.3 to 5 are the children of one Sri K. Rangaiah.

2. C.I.B. Quarter No.41 SRT, situated at Saifabad, Hyderabad was allotted by the then Andhra Pradesh Housing Board to the father of petitioner under a 'Lease-cum-Sale' basis dt.29.12.1967, and subsequently a 'Lease-cum-Sale' Agreement dt.20.01.1979 was entered into between the Housing Board and the petitioner's father.

3. As per Clause 22 of the said Agreement, petitioner's father mentioned his family members as himself, his wife and a son, by name K. Prabhakar, who is 5th respondent herein.

4. The petitioner's name was not mentioned therein as a family member. There was no nomination in favour of petitioner either. Since the entire amounts due in respect of house property were not paid, the Housing Board did not register the house in favour of petitioner's father during his lifetime.

5. The petitioner's father died on 25.12.1993.

6. The petitioner then addressed letters dt.03.05.2008 and 13.08.2008 to the Housing Board stating that he is the eldest son of

his father, and his father had bequeathed the house to him under a Will dt.06.04.1993. He also filed judgment and decree dt.24.01.2006 in O.S.No.2941 of 2005 stating that he was declared as a legal heir of his late father by the IX Junior Civil Judge, City Civil Court, Hyderabad, and that the Housing Board, Hyderabad had mutated the property in his name and requested registration of the house in his name. He also enclosed Legal Heir Certificate issued by the concerned Mandal Revenue Officer. The said certificate indicated the names of respondent nos.3 to 5 also, apart from that of the petitioner.

7. Having realized that the petitioner was not the only legal heir, the Housing Board requested the petitioner to obtain 'No Objection Certificate' from respondent nos.3 to 5. It also disputed the validity of the judgment in O.S.No.2941 of 2005 stating that it was not binding on respondent nos.3 to 5 since they were not made parties to it and took the stand that unless all the legal heirs accept the Will or a competent Court declares the Will as genuine in which all other legal heirs are made parties, it will not act upon the said Will. It questioned the *bona fides* of the petitioner for not impleading his siblings as parties in the Civil Court or in the Writ Petition, and stated that the petitioner did not come to the Court with clean hands and has abused the process of Court. It also contended that enforcement of contractual rights cannot be done in Writ Petition.

8. The counsel, appearing for Telangana State Housing Board, reiterated the said submission, and counsel for respondent nos.3 to 5 supported the stand taken by the Housing Board.

9. From the facts narrated above, it is not in dispute that the allotment was in favour of the father of petitioner and respondent nos.3 to 5. The father of petitioner died on 25.12.1993. In the normal course, all the children of the deceased allottee would inherit the property. However, the petitioner is placing reliance on a Will dt.06.04.1993, executed in his favour by his father, and a judgment and decree dt.24.01.2006 in O.S.No.2941 of 2005 of the IX Junior Civil Judge, City Civil Court, Hyderabad wherein the said Court declared him to be the legal heir of his father on the basis of the said will. In the Civil Court, the petitioner had not impleaded the respondent nos.3 to 5 nor did he examine any attester of the Will. Such a judgment, therefore, cannot bind the Housing Board or the respondent nos.3 to 5. It indicates that the petitioner entertained a *mala fide* intention to deprive respondent nos.3 to 5 of the property by clandestinely obtaining a decree behind their back.

10. Therefore, in my considered opinion, the Telangana Housing Board was justified in insisting on the petitioner in obtaining 'No Objection Certificate' from respondent nos.3 to 5 as a condition precedent for executing a sale deed in his favour.

11. Also, enforcement of contractual rights of this nature cannot be done in a Writ Petition under Article 226 of the Constitution of India. Therefore, on the ground that petitioner has not approached the Court with clean hands and also on the ground that contract of this nature cannot be enforced by petitioner under Article 226 of the Constitution of India, I find no merit in the Writ Petition, and it is accordingly dismissed. No costs.

12. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-02-2017

Ndr/*

