

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.26689 of 2006

ORDER:

This writ petition is filed seeking writ of *mandamus* declaring the proceedings of the 1st respondent-Housing Board dated 07.12.2006 and the consequential notice published in Eenadu daily dated 17.12.2006 in respect of Flat No.147/ 12, Phase-IV, Kukatpally, as illegal and arbitrary and consequently direct the respondents to allot Flat No.147/ 12 or 143/ 12 in Phase-IV, Kukatpally, Hyderabad in favour of the petitioner.

The brief facts of the case, according to the petitioner are;

That in pursuance to the notification issued by the respondents for allotment of house flats at Kukatpally, the petitioner submitted an application for allotment of a flat. A draw has been conducted and the petitioner was allotted Flat bearing No.147/ 12, LIG/ Phase-IV. After the allotment, the petitioner made a representation dated 09.04.2001 to the respondents requesting for allotment of Flat No.143/ 12 in lieu of Flat No.147/ 12. The 2nd respondent issued a letter dated 28.01.2002 stating that the application of the petitioner has been considered, subject to payment of Rs.34,770/- towards installments and Rs.29,327/- towards penal interest. Petitioner was requested to submit her willingness to take LIG-143/ 12 on or before 15.2.2002. But according to the petitioner, the said letter was received by her on 23.03.2002. Then she addressed a letter dated 28.3.2002 to the 2nd respondent expressing her willingness to take the said flat in lieu of Flat No.147/ 12, but sought permission for waiving of the penal interest of Rs.29,324/ -. It was also stated in the said letter that as the petitioner has already paid an amount of Rs.10,600/- towards EMD for Flat No.147/ 12, the same may

be adjusted towards installment amount for Flat No.143/ 12. The said letter was received by the 2nd respondent on 28.03.2002. Due to ill health and domestic problems, the petitioner could not pursue the matter further. As the said flat was not allotted to any one, the petitioner again made a representation on 25.5.2006 which was received in the office of the 2nd respondent on 30.05.2006 stating that she was willing to pay the amount of Rs.34,770/- in installments and requested the 2nd respondent to adjust the EMD amount that has already paid by her towards Flat No.147/ 12. As there was no response, again a representation was sent on 01.11.2006 wherein the petitioner has agreed to pay the entire amount with penal interest and requested the 2nd respondent to permit her to pay the same. The said letter was received by the 2nd respondent on 6.11.2006. Again remainders were given on 21.11.2006 and also on 30.11.2006, but there was no response from the 2nd respondent for those representations.

Auction cum tender notification dated 15.12.2006 was issued, which was published in Eenadu daily dated 17.12.2006, stating that Flat No.147/ 12 along with other vacant flats are sought to be put to public auction on 27.12.2006. When the petitioner enquired from the office of the 2nd respondent, she came to know that already proceedings were issued cancelling the allotment on 07.12.2006. Non payment of installment is not due to her own violations but on the ground that the respondents have agreed to allot alternative flat and that the correspondence in this regard was going on. At no point of time, petitioner was informed that the order dated 28.1.2002 allotting Flat No.143/ 12 has been cancelled. The said order cancelling the allotment is arbitrary and is in violation of the principles of natural justice, as no notice or opportunity was given to the petitioner before passing the

impugned order. At no point of time, the respondents have given any notice directing the petitioner to pay the installments for the originally allotted flat nor they have informed that the alternate flat is not allotted. There was no response to the innumerable representations made by the petitioner. The petitioner is a physically handicapped person and the said Flat No.143/ 12 is still vacant and she is ready and willing to pay the amount.

A counter affidavit has been filed by the 2nd respondent, *inter-alia* contending that pursuant to the application dated 17.01.1981 of the petitioner, she was issued allotment letter dated 11.9.1986 allotting Flat No.147/ 12 at Kukatpally on hire purchase system subject to conditions mentioned therein. As per the said allotment, petitioner was required to pay 30% of the tentative cost of the Flat in three installments of 10% each. It is also mentioned in the said allotment letter that failure to make all or any of the payments on or before the due dates will result in cancellation of the allotment and forfeiture of the amounts paid. The petitioner has paid 10% of the amount towards first and second installments on 24.12.1986 and 07.08.1987, respectively, with some delay and failed to pay the third 10% of the down payment and to enter into agreement. Hence, her allotment was cancelled vide proceedings dated 30.04.1996 duly forfeiting the EMD as per the A.P. Housing Board Allotment Regulations. Thereafter, as per the representation dated 27.05.1996 of the petitioner, the allotment was restored vide proceedings dated 02.09.1996 and she paid third 10% of the down payment and entered into an agreement on 13.11.1996. She was issued 'Handing Over Letter' and asked to pay the arrears of installments from 01.04.1992 to 31.12.1996. Physical possession of the flat was taken by the petitioner on 24.12.1996. After taking possession, as she failed to

pay the arrears of installments and future quarterly installments or penal interest and other charges, a notice dated 07.11.1997 was issued to the petitioner and in pursuance of it, she was evicted from the flat vide order dated 26.03.1998 by the competent authority under Sections 52 and 53 of the A.P. Housing Board Act, 1956 on 24.09.1999. After cancellation of the allotment of Flat No.147/ 12, it was re-allotted to one K.Saraswathamma on 12.11.2001. The said proceedings were not challenged by the petitioner and after about three years, she made another representation dated 09.04.2001 stating that she is a physically handicapped person and the flat which was allotted to her i.e., Flat No.147/ 12, is situated in the 3rd floor and requested for allotment of any other flat in the ground floor. As Flat No.143/ 12 in the ground floor was available, the respondents vide letter dated 28.01.2002 informed the petitioner that her request for allotment of Flat No.143/ 12 will be considered, subject to payment of Rs.34,770/- towards installments and Rs.29,327/- towards penal interest outstanding on or before 15.02.2002. The petitioner failed to pay the said amount on or before the given time. But on 28.03.2002, the petitioner submitted a representation stating that she received the letter dated 28.01.2002 on 23.03.2002 and that she is willing to take Flat No.143/ 12, if she is permitted to pay only the installment amount of Rs.34,770/- and the penal interest amount of Rs.29,327/- is waived. She also requested for adjustment of Rs.10,600/- paid by her as EMD towards Flat No.147/ 12 to Flat No.143/ 12. As the petitioner did not give her willingness for allotment of Flat No.143/ 12, as per the terms and conditions of the letter dated 28.01.2002, her application was not considered and was not allotted Flat No.143/ 12 and it was decided to put the said vacant flat for auction. As per Regulation 28(iii) of the A.P. Housing Board (Allotment, Management and Sale of

HIG, MIG, LIG and EWS Houses or Flats) Regulations, 1997, in respect of vacant houses/ flats subsequent to cancellation of allotment in default of payment of installments or dues, a fresh notification shall be issued for such vacant houses/ flats. The other alternate is putting the same to public auction as per Rule 29 of the APHB Rules, 1959.

On 26.1.2006, notice before admission was ordered by this court in the present writ petition and the following interim direction was granted:

“In the meanwhile, the respondents may proceed with the auction, under the impugned auction notification, however, the same shall not be confirmed until further orders. It is also open to the petitioner to participate in the auction, if so chooses.”

No vacate stay petition has been filed by the respondents.

Heard Sri O. Manohar Reddy, learned counsel for the petitioner and Sri C. Buchi Reddy, learned standing counsel for the respondents- Housing Board. Perused the record.

It is contended by the learned counsel for the petitioner that no notice or opportunity was given to the petitioner before deciding to auction the said flat. It is curious to note that in the counter-affidavit, a specific stand has been taken with regard to Flat No.147/ 12 that the allotment in favour of the petitioner so far as this flat is concerned was cancelled and it was re-allotted to one Saraswathamma and that she took possession of the same. The auction cum tender notice dated 15.12.2006 was published in Eenadu daily dated 17.12.2006 with regard to the very same flat i.e., flat No.147/ 12, though the said flat was already allotted to one Saraswathamma, presumably, the said auction notice is with regard to flat No.143/ 12.

Learned counsel for the petitioner also contended that even though the letter of the 2nd respondent is dated 28.01.2002 asking the petitioner to make payment of installment amount together with penal interest on or before 15.02.2002, the said letter was received by the petitioner on 23.03.2002. The said averment in the writ affidavit was not denied by the respondents in their counter-affidavit. The petitioner, immediately, made a representation dated 28.03.2002 to the 2nd respondent stating that she received the said letter on 23.03.2002, which was acknowledged by the 2nd respondent office. In this representation also, the petitioner requested the respondents to permit her to pay the amount of Rs.34,770/- towards installments and to waive the penal interest of Rs.29,327/-. She also sought adjustment of the amount of Rs.10,600/- paid towards EMD for quarter No.147/12 to quarter No.143/12. There was no reply, whatsoever, to this letter by the respondents. On 25.05.2006, the petitioner made another representation to the 2nd respondents stating that she is physically handicapped person and that she is willing to pay the installment of Rs.34,770/- after adjusting the EMD amount already paid by her. The said representation was also acknowledged by the office of the 2nd respondent. Again on 01.11.2006, the petitioner made another representation to the 2nd respondent expressing her willingness to pay the installment amount with penal interest. She specially stated in the said representation that the respondents have not given permission to pay the remaining balance amount so far. This representation also contains the acknowledgment of the office of the 2nd respondent. Again on 21.11.2006 and 30.11.2016 the petitioner made further representations to the 2nd respondent stating that the respondents have not given permission to pay the balance amounts, which were all acknowledged by the office of the 2nd

respondent. In spite of so many representations made by the petitioner, there is no single reply from the respondents herein. Instead, they published the auction cum tender notice dated 15.12.2006 in Eenadu daily news paper on 17.12.2006.

Even In the counter-affidavit filed by the respondents, contents of these representations and the acknowledgments were not denied by them. If the respondents would have replied to the representations of the petitioner, saying that they are not agreeable for the same, the petitioner would have a choice of complying with those conditions or not. A specific plea has been taken by the petitioner in the writ petition stating that Flat No.143/ 12 is still vacant. The said averment has not been denied by the respondents in their counter-affidavit. Further, without giving any reply to the various representations made by the petitioner, without giving notice or opportunity to the petitioner, straightaway the respondents gave auction cum tender notice on 15.12.2006.

On 21.07.2017, this court passed the following order:

“Post on 04.08.2017 for filing calculation of the amount that is required to be paid by the petitioner in respect of Flat No.143/ 12, which is said to be vacant as on today.”

The respondents have not filed the calculation memo as directed by this court on 21.07.2017. Even though the petitioner sought a direction to declare the proceeding dated 07.12.2016 which was issued cancelling the allotment of flat No.147/ 12, the petitioner has not pressed the said relief, as the same does not relate to flat No.143/ 12, so far as cancellation of allotment is concerned.

As stated above, though the respondents directed the petitioner vide letter dated 28.01.2002 to pay the installments with penal interest, the said letter was received by the petitioner only on 23.03.2002 and the said fact was not specifically denied by the respondents. In spite of repeated representations, as many as five, the last of which was dated 30.11.2016, the respondents, suddenly without giving any reply to these representations, issued auction cum tender notice on 15.12.2016.

In the facts and circumstances of the case, as the petitioner is ready and willing to comply with the terms and conditions mentioned in the letter dated 28.01.2002, and as the said flat i.e., Flat No.143/ 12 is still vacant, the respondents are directed to consider the allotment of Flat No.143/ 12 in favour of petitioner by calculating the amount due as on today including interest and by granting credit to all the amounts paid by her including EMD amount paid towards flat No.147/ 12 and pass appropriate orders.

The writ petition is allowed to the extent stated above. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand cancelled.

KONGARA VIJAYA LAKSHMI, J

Date: 13.11.2017
Bss/ GK

HON' BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

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Bss/ Gk