

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION Nos.13956 & 13957 OF 2007

COMMON ORDER:

As the issues involved in both these writ petitions are one and the same, they are being disposed of by way of a common order.

Both these writ petitions are filed seeking a direction against the respondents to execute and register the rectification deed to convey the proportionate undivided share in the land in proportion to the Shops bearing Nos.5 & 4 respectively, situated in the first floor of Commercial complex, opposite to Shiva Parvathi Theatre, Kukatpally, Ranga Reddy District, admeasuring 567 sq. feet purchased by the petitioners in the auction conducted by the respondents on 19.06.2004 under the registered sale deed dated 16.12.2004.

The brief facts of the case, according to the petitioners, are that the respondents issued tender-cum-auction notice on 19.06.2004 proposing to sell Shop Nos.1 to 5 situated in the first floor of Commercial complex, opposite to Shiva Parvathi Theatre, Kukatpally, Ranga Reddy District. The petitioners in both the writ petitions participated in the said tender and they were allotted shop Nos.5 and 4 respectively admeasuring 567 sq. feet, each, for a total consideration of Rs.31,05,000/- for each shop. Respondents have executed registered sale deeds in favour of the petitioners on 16.12.2004. The petitioners approached the financial institution for availing the loan and the same were rejected on the ground that the sale deed does not contain the proportionate and undivided share in the land. Then they

approached the respondents to execute the deed of rectification. When there was no response from the respondents, petitioners filed Writ Petition Nos.16586 & 16609 of 2005 and they were disposed off on 28.7.2005, directing the respondents to consider the representation of the petitioners dated 9.5.2005 and pass appropriate orders thereon after giving an opportunity to the petitioners. After filing of the contempt case, the respondents issued the impugned letter dated 22.12.2005 stating that it is not possible to transfer the undivided share in the sale deed as per the terms and conditions contained in the Tender-cum-Auction notification. Aggrieved by those letters, the present writ petition has been filed.

Counter affidavit has been filed by the respondents in W.P. No.13957 of 2007 denying the averments made in the writ petition stating *inter alia* that the writ petition is not maintainable. It is stated that the tender-cum-auction notification does not stipulate or indicate that they will convey the proportionate undivided share in the land. Even though the respondents were given the draft sale deed prior to the execution of the same, they never objected to the recitals thereon. The respondents never indicated that undivided share in the land will be given to them and therefore the petitioners cannot seek for the same. Clause 11 of the terms and conditions of auction clearly indicate that the land covered by the shops is common property and the successful bidders/tenderers have no exclusive right on it and that the auction purchasers shall not have any right on the upper floors or terrace.

Heard the learned counsel for the petitioners and the learned standing counsel for the respondent Housing Board.

Learned counsel for the petitioners submitted that the respondents cannot transfer the rights in the shop without undivided share in the land. He further submitted that if due to any natural calamities, the structures on the land are demolished, the petitioners will not have any remedy, if the proportionate share in the land is not transferred.

Learned standing counsel for the respondent Housing Board contended that at the time of auction itself, it was clearly mentioned that the auction is only for the shop and drew the attention of the Court to the terms and conditions which are annexed to the auction notice dated 19.06.2004. Clause 11 of the terms and conditions deals with as follows:

“11. The land covered by the shops is a common property and the successful bidder/tenderer has no exclusive right on it. The auction purchaser/tenderer shall not have any right on the upper floors or on the terrace. The A.P. Housing Board is the owner of the entire property except the plinth area covered by the shops.”

Learned standing counsel for the Housing Board placed before this Court the decision of the Madras High Court in **M/s. Park View Enterprises and others vs. State of Tamil Nadu and others**¹, wherein it was held that “Rather the Transfer of Property Act proceeds on the basis that in law ownership of a building is different from ownership in the land, and that land and building could be owned by different persons in the eye of law.”

He further submits that the sale deed also contains the specific recitals with regard to shop and not to the land. The schedule of the property which is annexed to the sale deed clearly

¹ AIR 1990 Madras 251

mentions what is transferred i.e. 567 sq. feet and nothing is mentioned with regard to the share of the land.

In the counter affidavit filed on behalf of the respondents at para No.9, it is categorically stated thus:

“The A.P. Housing Board hereby undertakes, clarifies and places on record that it will not sell the undivided share in the land to any third party and the proportionate share shall be left in tact and shall not be transferred, alienated, sold or encumbered by the Housing Board. The intention is to preserve the property as it stands today. The Housing Board also undertakes that in the event of the whole building requiring reconstruction, the Board will reconstruct and hand over the petitioners, the equivalent area which is under their occupation, enjoyment and in respect of which they are the owners as on date, to them at the cost of the owner/petitioner.”

As the respondents have given an undertaking that in the event of whole building requiring reconstruction, Board will reconstruct and hand over the same to the petitioners at the cost of the petitioners/owners, the apprehension of the petitioners that in the event of a natural calamity, the petitioners will not have any structure, is removed and the respondents are bound by the same.

When the petitioners have participated in the auction conducted by the respondents on 19.6.2004, they are bound by the terms and conditions stipulated therein. When condition No.11 of the terms and conditions specifically say that the Housing Board is the owner of the entire property except the plinth area covered by the shops, the petitioners cannot make any claim over the land in which the shops are constructed.

In view of the facts and circumstances of the case and also in view of the fact that the writ petitions are not maintainable for

rectification of the sale of deeds, the writ petitions are dismissed.

No order as to costs.

Consequently, the Miscellaneous Applications, if any shall stand closed.

Date:16.11.2017
Gk

KONGARA VIJAYA LAKSHMI, J



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