

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.5700 OF 2010

DATED : 17.08.2017

Between :

B.Ajay S/o.Late Sri B. Narasimha Rao,
Aged 47 yrs, Occu : Joint Commissioner of Labour,
R/o.Flat No.III/4, Daffodils Apartments,
Durga Bhai Deshmukh Colony, Hyderabad & another.
.. Petitioners

And

K.Prabhakara Rao S/o.Not known,
Aged not known, Occu : Not known,
R/o.Flat No.1-1, Daffodils Apartments,
Durga Bhai Deshmukh Colony, Hyderabad & others.
.. Respondents



This court made the following :

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ORDER :

The first petitioner is the owner of Flat No.III-4 and 2nd petitioner is owner of Flat No.II-3 of Daffodils Apartment Building, Durga Bhai Deshmukh Colony, Hyderabad. Respondents 1 to 3 are also residents of the same apartment and office bearers of the 4th respondent-Association at the relevant point of time. Petitioners are members of M/s.Daffodils Apartment Owners Association (for short 'the Association'). The Association was formed to deal with all the common issues concerning the residents of Apartment building. Alleging that petitioners failed to pay maintenance charges as required by the provisions of the by-laws, it appears a resolution was passed by the General Body of the Association on 01.07.2007 to disconnect water supply to their apartments. On 30.07.2007 the Association issued notice informing the petitioners that their water connections would be disconnected after ten days of the notice, unless the payment of all arrears was paid. Aggrieved by the said notice, petitioners filed O.P.No.1381 of 2007 on the file of II Additional Chief Judge, City Civil Courts, Hyderabad. By order dated 27.10.2010 the said O.P., was dismissed. Hence, this Civil revision petition.

2. Heard learned counsel for the petitioners and learned counsel representing respondents 1 to 4.

3. The primary challenge to the notice was on the ground that the said notice was issued in purported exercise of power under the Andhra Pradesh Apartments (Promotion of Construction And Ownership) Act, 1987 (for short 'the Act, 1987') and the Rules

made there under, to take penal action against erring residents of the apartment building. Learned counsel submits that the provisions of Chapter III of the Act, 1987 are applicable only if an agreement is duly executed and registered by owners living in the apartment building, whereas, the 4th respondent-Association, has not executed such agreement and registered and therefore, the provisions of Chapter III are not attracted. Learned counsel also submits that even though, this contention was specifically urged, the Court below erred in relying on the provisions of by-laws to reject their O.P.

4. Learned counsel for the respondents does not dispute the statutory requirements and also the fact that members of the 4th respondent Association have not executed any declaration and registration of the same.

5. Chapter III of the Act, 1987 deals with special facilities. Section 21 is part of Chapter III. According to Section 21, the Manager of the apartment Association is empowered to take penal action, with prior notice, to curtail/reduce essential supplies or service enjoyed by the apartment owner for failing to comply with the decisions taken by the Association. As per the explanation appended to Section 21, essential supply or service includes supply of water. In purported exercise of this power, the impugned notice was issued to cut off water supply to the premises owned by the petitioners. However, as per Section 2 of the Act, provisions of Chapter III shall apply only to such of the properties where, all the owners thereof subject themselves to the provisions of Chapter III by duly executing and registering the declaration as provided there under.

6. It is not in dispute that no such undertaking was executed and registered. This fact was also accepted by the Court below. Categorical finding is recorded by the Court below holding that the respondents cannot justify their action of issuing impugned notice under the guise of Section 21 of the Act, 1987. However, the relief was refused to the petitioners on the ground that they are bound by the provisions of the by-laws of the Association and the action of the petitioners in not paying the maintenance charges was in violation of by-laws and therefore, it was permissible for the Association to take action.

7. Apparently, notice was issued in exercise of powers under the Act, 1987 and as noticed above, even the Court below recorded clear finding that provisions of the Act, 1987 are not applicable to the 4th respondent-Association. That being so, the Court below erred in dismissing the O.P. Enforcement of the by-laws is an independent issue which could not have been considered to non-suit petitioners.

8. Having regard to the statutory mandate, notice which was challenged before the Court below is not sustainable and the order of the II Additional Chief Judge, City Civil Courts, Hyderabad in O.P.No.1381 of 2007 is set aside and consequently, the notice dated 30.07.2007 impugned in O.P.No.1381 of 2007 is also set aside.

9. However, it is represented that during pendency of the proceedings before the II Additional Chief Judge, petitioners have deposited approximately an amount of Rs.30,000/- and the amount is still lying with the Court. Learned counsel for the petitioners fairly submits that the petitioners have no objection for

the 4th respondent-Association to withdraw the said amount and to utilise the said amount for the activities of the Association. The fair statement of learned counsel is accepted and 4th respondent-Association is given liberty to withdraw the amount by filing appropriate application before the Court below and to utilise the said amount for common purposes of the apartment welfare association.

10. With the above observations, the Civil Revision Petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

17th August, 2017
Rds

P.NAVEEN RAO,J

