

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION No.9435 OF 2005

ORDER:

This writ petition is filed challenging the order of the A.P. Cooperative Tribunal at Hyderabad (for short, the Tribunal) passed in CTA.No.66 of 2002 dated 04.03.2005, confirming the order of the Registrar/Arbitrator of Cooperative Societies, Andhra Pradesh, Hyderabad, first respondent herein, in ARC.No.16 of 1999 dated 17.01.2002.

2. The second respondent is a Society and is governed by the provisions of the A.P. Cooperative Societies Act, 1964 (for short, the Act). The third respondent was admitted as a member in the second respondent Society with membership No.1100 and she was also allotted plot No.303Q in Block No.1, Jubilee Hills, Hyderabad. Thereafter, the third respondent transferred her membership and also the said plot in favour of the petitioner under three registered sale deeds and the same was approved by the Managing Committee of the second respondent Society. While so, the fourth respondent filed a petition under Sections 61 and 63 of the Act before the first respondent challenging the transfer of membership and also the plot made by the third respondent in favour of the petitioner herein. The first respondent, by order dated 17.01.2002, disposed of the same setting aside the allotment/transfer of subject plot made by the second respondent Society in favour of the petitioner and directed the

second respondent to resume the plot from the petitioner and to re-allot the same to its other eligible members. Aggrieved by the said order, the petitioner and the fifth respondent herein, who is the father of the petitioner, filed an appeal in CTA.No.66 of 2002 before the Tribunal and the Tribunal, by its judgment dated 04.03.2005, dismissed the same, confirming the order of the first respondent. Challenging the same, the present writ petition is filed.

3. Heard.

4. The points that arise for consideration before this Court are:

“(1) Whether the plot purchased by the petitioner is from the third respondent or from the second respondent Society by way of allotment?

(2) Whether the issue of validity and cancellation of sale deeds can be gone into by the first respondent under Sections 61 and 62 of the APCS Act?

POINT NO.1:

5. Originally the second respondent Society has allotted the subject plot in favour of the third respondent as per their by-law No.42 (e), (f) and (g). To appreciate the facts, it is necessary to refer by-law No.42 (e), (f) and (g) and they read as under:

“e) A member shall not be allotted more than one plot, persons who are already owning house plots or houses either in their names or in the names of any members of their families in the town or the area covered by the society shall not be eligible for allotment of plots by the society. A suitable declaration should be obtained from each applicant.

f) For each family consisting husband and wife and unmarried children, only one plot should be allotted.

g) Any dependent son, daughter, brother or other relative shall not be allotted a plot if any member of a family has been already allotted a plot.”

6. A perusal of the above by-laws, it is clear that there was no disqualification insofar as allotment of the plot in favour of the third respondent concerned. The right and title of the third respondent were not under challenge. Hence, the third respondent had alienable right and title to sell the subject plot and he sold the same in favour of the petitioner. Therefore, the said alienation does not amount to allotment of plot as contemplated under by-law No.42 (e) (f) and (g) as has been dealt by the Tribunal. It is needless to observe that the allotment is different from sale. Accordingly, this point is decided in favour of the petitioner.

POINT NO.2:

7. In pursuance of the resolution of the Managing Committee of the second respondent approving the sale of subject plot by the third respondent, the sale deeds said to have been executed in favour of the petitioner cannot be said to be invalid documents and the same do not suffer from any illegality or infirmity. The locus of the fourth respondent in filing a petition before the first respondent seeking to declare the sale deeds between the petitioner and the third respondent is the one beyond the scope of the Act. Entertaining the said petition and holding the sale deeds as

invalid documents by the first respondent is without jurisdiction. The competent civil Court is having the jurisdiction, but not the first respondent. Therefore, the orders of the first respondent and the Tribunal are liable to be set aside. Accordingly, this point is also decided in favour of the petitioner.

8. For the reasons aforesaid, the writ petition is allowed, setting aside the order of the A.P. Cooperative Tribunal at Hyderabad, in CTA.No.66 of 2002 dated 04.03.2005 and also the order of the Registrar/Arbitrator of Cooperative Societies, Andhra Pradesh, Hyderabad, in ARC.No.16 of 1999 dated 17.01.2002. No costs. Miscellaneous petitions pending, if any, shall stand closed.

Date: 20.07.2018
TJMR

T.AMARNATH GOUD, J