

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.18305 OF 2005

ORDER:

This Writ Petition is filed seeking to issue a Writ of *Certiorari* calling for records pertaining to the order dated 17.11.2004 passed in C.T.A.No.193/2001 by The Andhra Pradesh Co-operative Tribunal at Hyderabad (for short 'Tribunal'), the second respondent herein, and quash the same as arbitrary, illegal, unreasonable, unsustainable, without jurisdiction and violative of Articles 14 and 300-A of the Constitution of India.

Brief facts of the case are that the first respondent-The Treemoorthy Weaker Sections Co-operative Housing Society Ltd., Secunderabad (for short 'the Society'), had acquired the land to an extent of Acs.30.00 guntas in survey No.74/12 of East Maredpally (V), Secunderabad. Petitioner, being a member of the Society, was allotted plot No.71/A from out of the sanctioned lay out by the Society in the year 1981. She paid entire sale consideration of Rs.14,800/- @ Rs.37/- per square yard. The Society executed a registered sale deed vide document No.2454/81 registered in the office of the Sub-Registrar, Maredpally, Secunderabad, and since then she has been in continuous possession and enjoyment of the said plot. In the year 1985, when the petitioner intended to construct a house in the said plot, the person-in-charge of the Society had issued no-objection certificate dated 05.06.1985 for the purpose of obtaining housing loan by mortgaging the said plot and accordingly, she obtained loan from Andhra bank, Sultan Bazar, Hyderabad, on 16.12.1992.

Initially, the petitioner constructed temporary sheds consisting of three rooms in the said plot to facilitate the storage of material for watch and ward. Subsequently, the petitioner raised basement and pillars for constructing house in the said plot. At that juncture, the Managing Committee of the Society filed A.R.C.No.20/2000 before the Arbitrator-cum-Deputy Registrar of Co-operative Society, Hyderabad, under the provisions of the Co-operative Societies Act (for short 'the Act'). The Arbitrator dismissed the case on 20.07.2001 observing as follows:

“ The respondent cannot be made responsible for the misdeeds or misuse of society money by the then President or Treasurer as the respondent paid the cost of the suit property and after receipt of full cost of plot, the then President of the society has executed registered sale deed in favour of the respondent in the year 1981. It is felt that the respondent cannot be made responsible for the fault committed by the Ex-Committee. If the plot is not in the approved layout the petitioner society should submit revised layout to the competent authority and get it sanctioned and regularise the plot with the extent as per the sale deed. Further, it is observed that the claim is barred by limitation.”

Being aggrieved by the said order of the Arbitrator, the Society preferred an appeal before the Tribunal vide C.T.A.No.193 of 2001, which was allowed vide order dated 17.11.2004 with the following findings:

“ In the plaint filed before the Arbitrator at page No.3 and 4 it is specifically pleaded that the then President K.Adams committed number of irregularities and complaints were made against him and Co-op. department conducted enquiry against K.Adams under Section 51 of APCS Act and recommended for recovery of amounts. Thereupon 28 cases were filed and awards were passed in ARC No.138/86 to 159/86 and 162/86 to 167/86 under Sec.61 of APCS Act for recovery of amounts. The Arbitrator did not made enquiry about the said surcharge orders passed under Sec.61 of the

Act against the then President K.Adams who registered the sale deed of R2. It is apparent from the record that he sale deed of R2 executed fraudulently by the then President K.Adams and Treasurer Samuel David without resolution and authority from the Managing Committee of society and the sale deed is pertains to nonexistent house plot No.71/A. When the plot No.71/A is not in existence question of claiming rights over the land of society is untenable. R2 proper remedy is to proceed against executants of his sale deed or to claim damages from concerned persons. When there is no layout for plot No.71/A, question of considering the rights of R2 will not raise, therefore directing the society to apply for revised layout to provide the house plot to R2 is unreasonable and which is not enforceable. Therefore, the impugned order under appeal is against to the principles of natural justice which is not considerable for nonexistent house plot”.

As against the same, the present writ petition came to be filed.

Sri Sarosh Bastawala, learned counsel for the petitioner, would contend that the petitioner, being the member of the Society, was allotted plot No.71/A situated in survey No.74/2 of East Maredpally (V), Secunderabad, on payment of entire sale consideration of Rs.14,800/- through account payee cheque in favour of the Society, registered sale deed bearing document No.2454/81 was executed, after following due procedure. After availing the housing loan when the petitioner started constructing the house in the plot and raised basement and pillars, the Managing Committee of the Society developed grudge against the petitioner and filed ARC No.20/2000 before the Arbitrator-Deputy Registrar of Co-operative Societies, Hyderabad. The Arbitrator after thorough enquiry and considering the evidence on record dismissed the ARC, but the Tribunal allowed the appeal in CTR No.193/2001 contrary to the provisions of the Act ignoring the fact

that the proceedings are barred by limitation as the same were initiated after 24 years of continuous possession and enjoyment by the petitioner. He would further state that when the Society started constructing watchman room, bath room and toilets for the watchman, the husband of the petitioner obstructed for constructing the same stating the said plot belongs to the petitioner in plot No.71/A. As the boundaries of plot No.71/A were not tallying with the existing boundaries of the disputed plot No.104, the Society raised a dispute before the Registrar and dispute was referred to the Arbitrator vide ARC No.20/2000. The Arbitrator dismissed the arbitration proceedings. Learned counsel would further contend that the authorities under the provisions of the Act such as Arbitrator under Section 61 of the Act and Tribunal under Section 76 of the Act have no power or authority to settle the dispute raised by the Society against the petitioner and the Society has to approach the competent Civil Court to settle the dispute with regard to allotment and registration of plot No.71/A, on the ground non-existing plot, before the Civil Court only, which is competent to settle the dispute. In support of his submissions, learned counsel placed reliance on ***Bhanushali Housing Cooperative Society Limited vs. Mangilal and others***¹, ***V.Shravan Kumar vs. S.B.Sharma***² and ***M.Venkataramana vs. A.P. Co-operative Tribunal, Hyderabad***³ to contend that the alleged illegal allotment and registration of a non-existing plot No.70/A and allowing the petitioner to occupy and construct in plot No.104, which is earmarked for common use of the members

¹ (2015) 10 SCC 277

² (2011) 1 ALD 385

³ (2010) 4 ALD 500 (D.B.)

of the Society, won't come within the meaning of the word 'business of the society' to invoke jurisdiction under Section 61 of the Act. The relief sought by the Society can be granted only by the Civil Court and not by the Arbitrator. As the dispute raised by the Society is not touching the business of the Society, the Arbitrator has no jurisdiction to entertain the same and further the bar of jurisdiction contemplated under Section 121 of the Act is not attracted to the dispute, which is not touching the business of the Society.

In the facts and circumstances of the case and in considered view of this Court, it is found that the petitioner, being a member of the Society, was allotted plot No.71/A situated in survey No.74/2 of East Maredpally, Secunderabad. She paid the entire sale consideration of Rs.14,800/- through account payee cheque in favour of the Society. The Society had registered the said plot in favour of the petitioner vide document No.2454/81 registered in the office of the Sub-Registrar, Maredpally, Secunderabad. When the petitioner started construction of house, the Managing Committee raised dispute before the Arbitrator under Section 61 of the Act vide ARC No.20/2000. The dispute was raised after 24 years of continuous possession and enjoyment of the petitioner over the said plot. The Arbitrator after thorough enquiry dismissed the ARC directing the Society to apply for revised lay out to provide house plot to the petitioner. Challenging the same, the Society preferred an appeal vide CTR No.193/2001 before the Tribunal and the same was allowed by the Tribunal.

Having heard the contentions of the learned counsel and perused the entire material on record including the decisions relied

upon, this Court is of the considered view that initiation of proceedings i.e. raising dispute before the Arbitrator under Section 61 of the Act is barred by limitation as the dispute is raised after 24 years of allotment/registration of the plot in favour of the petitioner. Further, as the dispute raised by the Society before the Arbitrator is not touching the constitution, management or business of the Society, it falls outside the provision of Section 61 of the Act. As the dispute is with regard to allotment and registration of the subject plot and the Society wants to dispute the existence of plot and its regularization, the same cannot be considered to be an act arising directly out of 'the business of the society' or even 'touching the business of the society' and it falls outside the provision of Section 61 of the Act and won't come within the meaning of 'dispute' referred to in Section 61 of the Act. When that be so, the Arbitrator under Section 61 of the Act and the Tribunal under Section 76 of the Act have no jurisdiction to decide the genuineness about execution of the registered sale deed No.2454/81 in favour of the petitioner. The Society had the only remedy to approach the competent Civil Court to get the dispute/grievance redressed. Hence, both the orders i.e. order of the Arbitrator dated 20.07.2001 passed in A.R.C.No.20/2000 and order dated 17.11.2004 passed by the Tribunal in C.T.A.No.193/2001 are hereby set aside.

The Writ Petition is accordingly allowed. However, liberty is given to the first respondent-Society to approach the competent Civil Court, as per law, for cancellation of the sale deed executed in favour of the petitioner.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

27th April, 2018
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