

THE HONOURABLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION NO. 16566 of 2006

ORDER:

Heard the learned counsel for the petitioners as well as the respondents.

The relief sought in the writ petition is as under:

“To issue a writ of mandamus or any other appropriate writ, order or direction, declaring the Condition Nos.11 and 12 mentioned in the letter No.2905/ E18/ EE(N)/ Shops/2006 dated 07.07.2006 as illegal, arbitrary and unconstitutional and consequently direct the respondents to sell the shops, which are in possession of the petitioners along with the undivided share of the land as per the rates fixed by the Government and pass such other or further orders.”

The facts of the case are that the petitioners are the leaseholders in the shops constructed in Potti Siramulu Nagar, Vijayanagar Colony, Hyderabad. Originally, the second respondent allotted the shops on lease for a period of five years to the petitioners 1 to 5 and the predecessors of petitioners 6 to 22 from 1972 to 1975. As far as the petitioners 10 to 22 are concerned, they are sub-tenants of the original lessees. Initially, the second respondent entered into rental agreements with all the allottees for a period of 5 years and the same has been renewed for every 5 years on payment of 50% excess over the existing monthly rent as per Regulation 17 of the A.P. Housing Board (Shops) Rental Regulations, 1975. All the petitioners are paying the monthly rents regularly to the Housing Board in compliance with the terms of the rental agreements. All the petitioners are eking out their livelihood

by doing business from their respective shops. However, the third respondent issued a notice No.9/PSN/EM4/EE(Hg)N/2005, dated 28.07.2005 cancelling the lease of all the allottees on the ground that they are in arrears of rent as on July, 2005 and they were asked to vacate and hand over the possession of the shops to the Housing Board within 15 days from the date of receipt of notice. Pursuant thereto, the petitioners gave a reply on 08.08.2005 stating that they are not in arrears of any rentals and requested the respondents not to take drastic steps. In spite of the same, the third respondent initiated the further proceedings for eviction under Section 52 to 54 of the A.P. Housing Board Act, 1956 on 30.08.2005 before the competent authority. Thereafter, the petitioners appeared before the competent authority and submitted their grievances for consideration. The third respondent sent a letter No.9/Shops/PSN/EM8/2005 dated 12.09.2005 requesting all the petitioners to attend a joint meeting on 28.09.2005. In pursuance of the said letter, all the petitioners have attended the joint meeting as said above wherein the second respondent offered to sell the shops at market value since the petitioners are in possession of the shops for more than 32 years from the date of filing of the writ petition. On such offer, the petitioners requested to sell the shops at the rates fixed by the Government along with undivided share of land. In the said meeting, the petitioners also gave representation in writing to the second respondent, on which the second respondent agreed to consider the same. However, the third respondent issued letter No.2905/E18/EE(N)/Shops/2006 dated 07.07.2006 to the effect that all the petitioners have agreed to purchase the shops on plinth area

basis at Rs.2,100/- per square foot and 25% of the total cost of the shop to be paid within one month from the date of the letter and the balance 75% should be paid within four months from the date of the letter i.e. on or by 07.08.2006 and 7.11.2006 respectively. It is further mentioned in Condition No.5 of the said letter that the sub-tenants/occupants are also entitled to purchase the shops on payment of 25% more on the total cost of the shops towards transfer fee. However, the petitioners relied emphasis on Condition Nos.11 and 12 which are relevant and material for the purpose of this case and the same are as under:

“Condition No.11. The shop will be registered in the name of tenant/purchaser without undivided share of land. The ownership of land will be vested with A.P. Housing Board and will have no right over the terrace.

Condition No. 12. There will not be any absolute ownership over the land on which the building is located and the purchaser will enjoy ownership of the shop sold. In case of reconstruction of the existing building in which the above shop is located, the Board will allot the equivalent area in that newly constructed complex at free of cost if construction takes place within a period of 10 years and after 10 years reconstruction takes place the purchaser of the shop shall bear 75% of the cost of the construction on Sft basis.”

The petitioners are basically aggrieved with incorporation of the above said two clauses and submit that the action of the respondents in not handing over the shops along with the undivided share of the land is illegal and arbitrary. The petitioners have specifically denied that they have agreed to purchase the shops alone at the rate of Rs.2,100/- per square foot as mentioned in the letter dated 07.07.2006. Thereafter, the third respondent issued another notice in letter No.9/SHOPS/PSN/EM8/2005, dated 28.07.2005 to all the petitioners and requested to vacate and hand

over the possession within 15 days from the date of receipt of the notice. It is also said that failing which, action will be initiated for eviction by filing necessary application before the competent authority. Aggrieved by the same, the present writ petition is filed.

Per contra, the respondents 2 and 3 filed a counter-affidavit denying the averments made in the affidavit filed in support of the writ petition and contended *inter alia* that the writ petition itself is not maintainable since the proposal of sale is out of a contract between the parties. The said proposal of sale is out of an agreement which was arrived at between the parties in a joint meeting which was signed by the occupants of the shops and through the representatives of the Housing Board. In order to get over the consent given during the meeting, the petitioners filed the present writ petition suppressing all the relevant and material facts. Therefore, the writ petition is liable to be dismissed on this aspect alone. It is also stated that the petitioners never requested the second respondent to sell the shops at the rate fixed along with the undivided share. In fact, there was a detailed discussion on 28.09.2005 and thereafter only the consent was taken and the parties have signed on the agreement. The reason for incorporation of Clauses 11 and 12 in the agreement is only to avoid haphazard development of the property by resorting to unauthorized construction in violation of the municipal building bye-laws causing inconvenience to the residents of the colony. In effect, there is a rationale behind inclusion of such clause in the agreements and on that ground alone, the Housing Board has agreed to sell the shops by allotment to the occupants instead of

putting it to auction. In this context, it is also mentioned that had the respondents resorted to auction, it would fetch much more amount than what is agreed to be sold. The petitioners failed to pay 25% of the total cost of the shops within one month from the date of letter dated 07.07.2006 and therefore, the proposal stands cancelled. Therefore, the present dispute which is contractual in nature, cannot be enforced in the present writ petition since the petitioners cannot resort to invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for enforcing the contractual obligations. More so, having accepted in the joint meeting on 28.09.2005, the petitioners cannot be allowed to backtrack on their consent. It is also specifically stated in the counter-affidavit that incorporation of the clauses and the fixation of the price of the shops sought to be allowed is only after mutual discussions and consent from the parties. The said proposals were forwarded to the Government along with the resolution of the Board and thereafter only, the proposal to sell the shops to the occupants was issued.

However, in reply to the said counter-affidavit, the petitioners have filed reply affidavit denying the aspect that they have agreed in the joint meeting held on 28.09.2005 that they will purchase only the shops but not the undivided share of the land. In fact, it is also stated that they have addressed a detailed representation to the respondents 2 and 3 on 01.08.2006 requesting for outright sale of shops which include undivided share of the land as was being done in the case of residential houses sold by Housing Board and they are paying the rentals regularly to the Housing Board. However, till date

no decision was taken on the said representation and the same is not communicated to the petitioners till date.

From the perusal of the pleadings and the material on record, the facts which are not in dispute are that the petitioners herein are the allottees of the shops constructed by the Housing Board and they are paying the rentals regularly to the Housing Board. In fact, the petitioners who are doing petty businesses in the said shops are eking out their livelihood from the income generated from the said businesses. Though the respondents have initiated proceedings for eviction of the petitioners, the same at a later point of time was converted into a scheme for selling the said shops to the tenants and the persons who are in occupation of the said shops at a price on the plinth area basis at Rs.2,100/- per square foot. However, there is a dispute with regard to whether the shops will be sold with or without undivided share of land. On this aspect, though the petitioners have denied that they have not agreed to purchase the shops without undivided share of the land, the respondents along with the counter-affidavit filed material to show that during the discussion in the meeting held on 28.09.2005 at 3 P.M. tenants have agreed to purchase the shops @ Rs.2,100/- per square foot by way of consent and signed the same subject to the terms and conditions mentioned therein. As far as the Condition Nos. 2 and 11 are concerned, they contemplate the tenant/purchaser have no right on the terrace of the shop and have no objection for constructions at the terrace by the Housing Board over the shops in future as well as the shop will be registered in the name of tenant/purchaser without undivided share of the land and the

ownership of the land will be vested with the A.P. Housing Board only. However, the said aspect has been specifically denied by the petitioners. A perusal of the said proceedings appears to be unusual since sale of any property, as a matter of fact, will be with undivided share of land. But, in the case on hand, the above said two clauses appear to be contrary to a regular sale. Be that as it may, this Court while exercising jurisdiction under Article 226 of the Constitution of India, cannot go into the disputed questions of fact relating to whether the petitioners have agreed for the said terms or not. On the other hand, though an averment has been made in the counter-affidavit that since the petitioners failed to pay 25% of the total cost of the shops within one month from the date of letter dated 07.07.2006 as agreed upon, the proposal has been cancelled. However, no such material is placed before this Court to show that the proposal has been cancelled. The fact remains that the petitioners herein, are doing business in the shops allotted to them and eking out their livelihood for the last more than 4 ½ decades. When the petitioners are in possession of the shops for such a long period, they cannot be thrown out, without giving them a reasonable opportunity of ventilating their grievances before the Housing Board, more particularly the competent authority in terms of Sections 52 and 53 of A.P. Housing Board Act. In fact, the petitioners have specifically averred that pursuant to the detailed representation submitted by them on 01.08.2006 for outright sale of shops including undivided share of land as was being done in case of residential houses sold by A.P. Housing Board, no orders have been passed till date. Even the respondents have also not placed

any material before this Court that the contentions raised by the petitioners herein in that context have been considered and any orders are passed either rejecting or accepting the same. In these circumstances, taking into the long standing occupation of the shops by the petitioners/occupants, this Court feels that the respondents are obligated to pass appropriate orders pursuant to the scheme floated for selling the shops to the tenants/occupants, in the light of the detailed representation, dated 01.08.2006 submitted by the petitioners.

Therefore, the writ petition is disposed of directing the respondents to consider the representation dated 01.08.2006 submitted by the petitioners and pass appropriate orders on the proposal to sell the shops to the tenants/occupants within a period of three months from the date of receipt of a copy of this order. However, it is made clear that till a decision is taken and appropriate orders are passed, no coercive steps should be taken to dispossess the petitioners from their respective shops. It is also needless to observe that during the course of passing of appropriate orders, if required, an opportunity of being heard may be given to the petitioners. There shall be no order as to costs.

As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand closed.

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P. KESHAVA RAO,J

Date:13.04.2018  
CCM

THE HONOURABLE SRI JUSTICE P. KESHA VA RAO



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Date:13.04.2018

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