

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 12028 OF 2005

ORDER :

The Writ Petition is filed to call for the records in CTA No. 124 of 2002 dated 07.02.2005 on the file of the 4th respondent – Chairman, A.P. Co-operative Tribunal, Hyderabad, to quash the said order and to direct the 2nd respondent – President / Secretary, Indian Airlines Employees Co-op. Housing Society to forthwith cancel registration of plot No. 30 in Survey Nos. 23, 35,30 and 58 (part) admeasuring 300 sure yards at Pavan Vihar, Thokatta Village, Secunderabad Cantonment in favour of Respondents 1 and 3 and to register the same in favour of the petitioner.

The brief facts, as averred in the Writ Petition, are that, the petitioner as well as the 1st respondent are the employees of the Indian Airlines and they were members of the Indian Airlines Employees' Cooperative Housing Society with Registered No. TA 484 under the provisions of the A.P. Cooperative Societies Act, 1964. The 1st respondent was allotted plot No. 30 in IV venture which was registered in her favour on 30.04.1988. Challenging the said allotment, the petitioner filed ARC No. 3 of 1989 before the Cooperative Sub-Registrar, invoking the arbitration clause, against as many as 20 respondents, for the following two reliefs:-

- (1) to declare the respondent No.2 to 20 as ineligible to hold the plots in the respondent No.1 society,

- (2) to direct the respondent No.1 society to cancel the allotment of plots and registration made to the respondents and allot any one such cancelled plot to him.

The said ARC was allowed vide order dated 05.04.1990 as under:

“It is ordered that the respondent (1) society viz. Indian Airlines Employees Cooperative Housing Society (TA 484) shall cancel the allotment and registration of plot Nos. 30 and 19 of IVth venture which were allotted in the past to respondent 8 and respondent 9.

The Respondent (1) society is directed to allot and register plot No. 30 of IVth venture presently held by Respondent 8 after its cancellation and withdrawing from Respondent 8 and Respondent 8 is the junior most member among Respondent 8 and Respondent 9, whose plots are ordered for cancellation under item No.1 above. The cost of the plot No. 30 of IV venture shall be refunded to Respondent 8 which was collected from her at the time of allotment and registration of the said plot and such cost to be refunded shall be collected from the petitioner for payment to Respondent 8.

The Air India and Indian Airlines Employees Cooperative House Building Society Limited TAB 586 to take immediate action for cancellation of the flats Nos. J-6 and J5 and J-4 allotted to Respondent 5, Respondent 6 and Respondent 7 and comply with these orders within a period of (30) days from the date of receipt of these orders.

The Respondent 1 society is further directed to take immediate action for resumption of vacant plots allotted to its members where the condition of construction of the houses has not been fulfilled as laid down in byelaw No. 42(10) of the society, by giving final notices to all such members.”

Questioning the said order dated 05.04.1990, the 1st respondent filed Appeal ie. CTA No. 20 of 1990 before the Cooperative Tribunal and the same was dismissed on 20.03.1992. The order of the Tribunal was challenged in Writ Petition No. 9538 of 1994, wherein, initially, in W.P.M.P. No. 11638 of 1994, by order dated 15.05.1994, stay of the order of the Tribunal was granted.

Eventually, the said interim order was vacated on 03.07.1997 in W.V.M.P.No. 507 of 1996. The Writ Appeal No. 948 of 1997 challenging the order dated 03.07.1997 was also dismissed on 29.08.1997, on the ground that the writ petitioner herself had submitted before the Court that she would not exercise the option of retaining the plot and surrounding the flat on which ground, ARC No. 3 of 1989 was allowed, as she was not eligible for the benefit of plot as well as flat. Finally, the Writ Petition itself came to be disposed of on 27.11.2002 giving liberty to the petitioner to file review invoking Section 78 of the Cooperative Societies Act. However, as per the petitioner, no review was filed by the 1st respondent. In 2001, the 1st respondent again filed ARC No. 36 of 2001, wherein, cancellation of registered sale deed dated 30.04.1998 in her favour was ordered on the ground that the relief granted in favour of the petitioner is beyond the relief claimed by her and such relief would not have been granted by the arbitrator. In Appeal i.e. CTA No. 124 of 2002, the Cooperative Tribunal, while rejecting all other points, concurred with the 1st respondent's contention and set aside the order of the Arbitrator to the extent of point No.3 ie. direction to cancel the sale deed and register the same in favour of the petitioner. The precise order of the Tribunal to the extent relevant is extracted for clarity as under:

“ In view of the finding given in point No.1, the main relief under the arbitrator proceedings is a premature relief did not come under the dispute before the Arbitrator. The relief sought under the arbitration proceedings can be granted as ancillary relief but not as main relief. Moreover, the Apex Court i.e. High Court of A.P. decided the matter in WP No. 507 of 1995 decided in the year 1997. The fresh dispute cannot be raised before the Registrar when the dispute

is already answered in the WP. Therefore, the relief of petitioner attracts the principles of therefore, the Arbitrator is rightly held that the appellant is not entitled for the relief sought. At the same time, the relief granted by the Arbitrator in point No.3 in the impugned order directing the Housing Society to cancel the sale deed and register the sale deed in favour of Respondent No.3 herein A.V.C. Mohan is beyond relief which is not sustainable.”

Challenging the order of the Cooperative Tribunal dated 07.02.2005, the present Writ Petition is filed.

Here, it is to be noted that the 3rd respondent came to acquire the property through a registered sale deed executed by the 1st respondent on 07.11.2002. Subsequently, the 3rd respondent had resold the property in favour of the 6th respondent on 25.03.2004.

Heard learned counsel for the petitioner.

Learned Government Pleader Sri Durga Reddy, with all his fairness, submits that ARC No. 36 of 2001 filed by the 1st respondent was not maintainable and that the order impugned does not require any interference, as the Cooperative Tribunal had only deleted that portion of the relief which was granted beyond the prayer of either of the parties. Hence, he prays for dismissal of the Writ Petition.

When the matter was listed on 06.12.2019, there was no representation on behalf of Respondents 3 or 6. Even today, there is no representation on their behalf.

The question which falls for consideration is in exercise of jurisdiction under Article 226 of the Constitution of India,

particularly in exercising the jurisdiction under certiorari, whether the order of the Tribunal can be interfered with.

It is not the case of the petitioner that the Tribunal had no jurisdiction nor committed violation of the principles of natural justice. However, it is the contention of the learned counsel for the petitioner that the Tribunal ought not to have interfered with the order of the Arbitrator even with respect to the direction to the housing society to cancel the sale deed in his favour, as the same had, in fact, was granted in ARC No. 3 of 1989 itself and the said orders have become final.

Having considered the submission of the learned counsel for the petitioner, it is to be noticed that there being no dispute that undisputedly, the petitioner seeks implementation of the order in ARC No. 3 of 1989, *albeit* indirectly. The procedure prescribed for enforcing the orders made under the Cooperative Societies Act is governed by Rule 52 of the Rules, 1964. In that view of the matter, the 3rd relief, which the petitioner claims, cannot be granted by this Court in a writ exercising the jurisdiction of Certiorari. In other words, the petitioner ought to have invoked the jurisdiction of the Competent Authority under Rule 52 of the Rules.

So far as the orders of the Cooperative Tribunal setting aside that portion of the order which directed cancellation of the sale deed cannot be found fault, as it is not the case of either the petitioner or the 1st respondent that any such relief was sought by them before the arbitrator. The petitioner had not initiated any proceedings before the arbitrator which was the subject matter of

CTA No. 124 of 2002). It is the 1st respondent who had invoked the arbitration clause. Though the arbitrator as well as the Cooperative Tribunal had rightly held that such proceedings were not maintainable on account of the earlier proceedings, the Cooperative Tribunal had taken into consideration the argument advanced on behalf of the 1st respondent to the extent that the arbitrator had exceeded the jurisdiction in granting a direction which could not have been granted without there being any claim. In that view of the matter, the order of the Tribunal to the extent of interfering with the orders of the arbitrator, dated 25.06.2002 cannot be found fault.

The Writ Petition is disposed of subject to the above. No costs.

The miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

09th December 2019

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