

HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER
WRIT APPEAL No.654 of 2019
07.08.2019

Between:

Telangana Housing Board and another

...Appellants

and

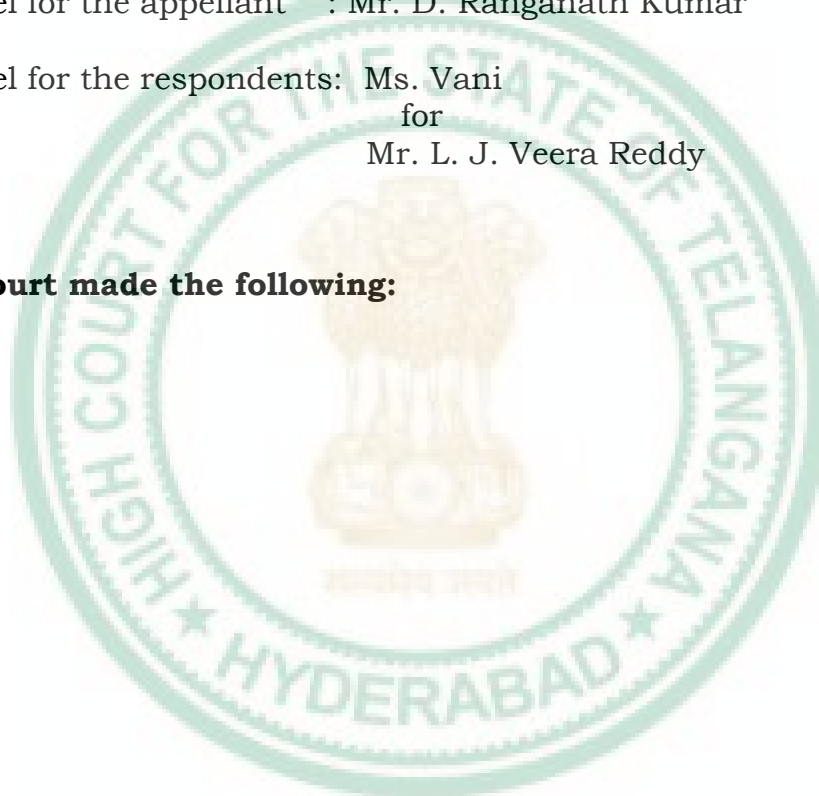
A. Venugopal and another

...Respondents

Counsel for the appellant : Mr. D. Ranganath Kumar

Counsel for the respondents: Ms. Vani
for
Mr. L. J. Veera Reddy

The Court made the following:



JUDGMENT: (Per the Hon'ble the Chief Justice Sri Raghvendra Singh Chauhan)

The appellants are aggrieved by the order dated 28.06.2019, passed by a learned Single Judge in W.P.No.22429 of 2018, whereby the learned Single Judge has allowed the writ petition filed by the respondent-petitioner ("the petitioner", for short), and has directed the appellants, the Telangana Housing Board ("the Board" for short), to transfer the subject house property, namely the property bearing No.130/SRT at Sanjeevareddy Nagar, Hyderabad, in the name of the petitioner.

Briefly, the facts of the case are that the petitioner claimed that his paternal grandfather was known as A.Venkaiah @ Hanumaiah, S/o. Balaiah. His grandfather hailed from Sadasivpet, near Zaheerabad, in Sagareddy District. He further claimed that on 17.05.1968 his grandfather applied for allotment of a house on rental basis to the erstwhile Andhra Pradesh Housing Board ("the erstwhile Board" for short). The erstwhile Board allotted a house, bearing No.130/SRT, located in Sanjeevreddy Nagar, Hyderabad, on rental basis. Subsequently, on 16.09.1969 his grandfather died.

Since the petitioner's father, A. Shankaraiah, was the sole legal heir, he submitted a representation dated 16.12.1969 to the erstwhile Board for seeking transfer of the tenancy over the subject property to himself. The erstwhile Board directed him to submit certain documents. After due compliance, on 14.04.1970 the tenancy over the house was transferred in the name of "A.Shankaraiah, S/o. Venkaiah". According to the petitioner, his father had wrongly shown the name of his grandfather as "A.Venkaiah".

Moreover, in October, 1977, the erstwhile Board issued a notice offering the said house property for outright sale on hire purchase basis. According to the petitioner, his father opted for such hire purchase. Therefore, the erstwhile Board converted the tenancy into a hire purchase arrangement. According to the petitioner, his father paid the equal monthly instalments upto March, 1992. His father expired on 20.04.1992 before the registration could be effected in his name. Upon the death of his father, the petitioner submitted an application, along with the death certificate, for seeking transfer of the allotment in his favour. In the death certificate, the name of the petitioner's grandfather has been shown as Hanumaiah i.e, the name of the petitioner's father has been shown as "A.Shankaraiah, S/o. Hanumaiah". Moreover, the erstwhile Board has asked the petitioner to produce legal heir certificate. The same was duly submitted. However, by letter dated 03.12.2014, the request of the petitioner to transfer the property was rejected by the Board, on the ground that there is a discrepancy between the names of "A.Shankariaah S/o. Venkaiah" and "A.Shankaraiah, S/o. Hanumaiah". According to the erstwhile Board, the original allottee was one "M. Venkaiah" and, yet, according to the petitioner, his grandfather's name was "Hanumaiah" and not "A.Venkaiah". According to the petitioner, the Board was not justified in rejecting his request. Therefore, he filed the writ petition before this Court. By order dated 28.06.2019, the learned Single Judge has allowed the writ petition as aforementioned. Hence, this appeal before this Court.

Mr. D. Ranganath Kumar, the learned counsel for the appellants, has pleaded that according to the records of the Board,

the original allottee was “M.Venkaiah S/o. Balaiah”. The documents submitted by Mr. A. Shankaraiah constantly showed that he was the son of “A.Venkaiah”. None of these documents ever indicated that A.Venkaiah, the original allottee, was known by any other name, such as “Hanumaiah”. However, when the petitioner submitted the death certificate of his father, namely A.Shankaraiah, his grandfather’s name has been shown as “Hanumaiah” and not as “A.Venkaiah”. Therefore, the Board was justified in concluding that the petitioner’s father is not the descendent of the original allottee, “M.Venkaiah”.

Secondly, the learned Single Judge has passed the impugned order merely on a presumption that in the countryside, a person may have more than one name. Therefore, the discrepancy between “A.Venkaiah” and “Hanumaiah” can be overlooked. But such a presumption cannot be made legally. Moreover, no document has been produced by the petitioner, which clearly goes to show that “A.Venkaiah” was known by any other name, such as “Hanumaiah”. Therefore, the Board was justified in concluding that the petitioner is trying to play fraud. These glaring facts have been overlooked by the learned Single Judge. Hence, according to the learned counsel for the appellants, the impugned order deserves to be set aside by this Court.

On the other hand, Mr. L. J. Veera Reddy, the learned counsel for the respondent-petitioner, submits that the Board has accepted all the instalments amount from A. Shankaraiah S/o A. Venkaiah. Secondly, in its counter, the Board has admitted that they had accepted the instalments amount from the petitioner’s father. Therefore, the Board is unjustified in claiming that the

petitioner, or his father are trying to play fraud on the Board. Lastly, the discrepancy with regard to the father's name of "A.Shankaraiah" was not pressed by the Board before the learned Single Judge. Therefore, a fresh plea cannot be raised by the Board before the appellate Court. Hence, the learned counsel has vehemently supported the impugned order.

The learned counsel for the petitioner is unjustified in claiming that a fresh plea is being raised by the appellant before this Court. For, even in the letter dated 03.12.2014, and in the counter filed by the Board, they had consistently taken the stand that there is a discrepancy with regard to the father's name of "A.Shankaraiah". According to the Board, the original allottee was "M.Venkaiah". Mr. A.Shankaraiah had shown his father's name as "A.Venkaiah". It is Mr. A. Shankaraiah who has paid all the instalments. However, when the petitioner submitted his father's death certificate, the death certificate revealed the name of "Mr. A. Shankaraiah, S/o. Hanumaiah". Since the death certificate revealed the father's name of A.Shankaraiah as "Hanumaiah" and not as "Venkaiah", a doubt cropped up in the mind of the Board. Therefore, from the very initial stage, the Board has been challenging the identity of the person who claims to be the descendent of "A.Venkaiah". Therefore, the contention raised by the learned counsel for the petitioner is unacceptable.

The learned counsel for the petitioner is also unjustified in claiming that in paragraph 12 of their counter, the Board has admitted the fact that it is the petitioner's father who had paid all the instalments. A bare perusal of paragraph 12 clearly reveals that the stand of the Board is that even the petitioner's father had

played fraud by claiming himself to be the son of A.Venkaiah. Hence, no admission has been made by the Board that the instalments have been made to the Board by the right person.

A bare perusal of the impugned order clearly reveals that the learned Single Judge has presumed that in the rural areas, a person can have more than one name. Therefore, even if there is a discrepancy with regard to the father's name of A.Shankaraiah, the said discrepancy can easily be ignored. Interestingly, even before the learned Single Judge, the petitioner has not produced a single document to establish the fact that "A.Venkaiah" was also known as "Hanumaiah". In the absence of a cogent and convincing evidence that "A.Venkaiah" was also known as "Hanumaiah", the presumption made by the learned Single Judge is legally unsustainable.

Interestingly, according to the proceedings dated 14.10.1968, the original allottee is "M.Venkaiah" and not "A.Venkaiah". Therefore, there seems to be a discrepancy even with regard to the surname of "Venkaiah". Hence, the Board was justified in taking a stand before the learned Single Judge that not only the petitioner, but even "A. Shankaraiah", who claims to be the son of "A.Venkaiah", had played fraud upon the Board. Needless to say fraud would unravel everything. Therefore, the learned Single Judge has overlooked the fact that the name of the original allottee was "M.Venkaiah", whereas the person who has paid all the instalments claims to be the son of "A.Venkaiah" and not "M.Venkaiah".

For the reasons stated above, this appeal is hereby allowed; the impugned order dated 28.06.2019 is set aside. There shall be no order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, CJ

DR. SHAMEEM AKTHER, J

07th August, 2019
JSU



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