

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.22429 OF 2018

ORDER

The petitioner assails the proceedings dated 31.05.2018 of the Executive Engineer (HG), North Division, Telangana Housing Board (*for brevity*, 'the Board') (signed by the Vice-Chairman & Housing Commissioner, Telangana Housing Board, Hyderabad), confirming his earlier proceedings dated 03.12.2014 and 18.05.2017 and rejecting the request of the petitioner for transfer and registration of the house bearing No.130/SRT at Sanjeevareddy Nagar, Hyderabad, in his name. A consequential direction is sought to the Board to do so.

The case of the petitioner is as follows: A.Venkaiah @ Hanumaiah, s/o. Balaiah, was his paternal grandfather and he hailed from Sadasivpet near Zaheerabad in Sangareddy District. He applied for allotment of a house on rental basis on 17.05.1968 and the erstwhile Andhra Pradesh Housing Board allotted him the house bearing No.130/SRT, Sanjeevareddy Nagar, Hyderabad, on rental basis. While so, A.Venkaiah @ Hanumaiah died on 16.09.1969. A.Shankaraiah, the father of the petitioner, was the sole legal heir of A.Venkaiah @ Hanumaiah as his wife had already died. A.Shankaraiah submitted representation dated 16.12.1969 to the erstwhile Board seeking transfer of the tenancy over the subject house to himself. The erstwhile Board directed him to submit certain documents and upon due compliance, the tenancy over the house was transferred in his favour under proceedings dated 14.04.1970. The petitioner claims that at that time itself, his father had shown his grandfather's name wrongly as 'A.Yenkaiah' but no fault was found with this discrepancy by the erstwhile Board during the lifetime of his father. The erstwhile Board then issued a notice in October, 1977, offering the subject house property for outright

sale on hire purchase basis. The petitioner states that his father opted for such hire purchase and the erstwhile Board converted the tenancy into a hire purchase arrangement. The petitioner asserts that his father paid the equated monthly instalments regularly up to March, 1992, that being the last instalment payable under the hire purchase arrangement. However, his father died on 20.04.1992 before registration of the house could be effected in his name. Upon the death of his father, the petitioner submitted an application along with a death certificate seeking transfer of the allotment in his favour. In the said death certificate, the petitioner's grandfather's name was shown as 'Hanumaiah'. The erstwhile Board asked for a legal heir certificate which was also submitted but no action was taken thereafter.

It appears that there was some litigation between the family members of the petitioner in relation to this house property which ultimately ended in a compromise before the Lok Adalat, whereby the sisters of the petitioner agreed for monetary settlement of their claims. They also expressed that they had no objection to the registration of the house in favour of the petitioner under letter dated 16.07.2016 addressed to the Board. The petitioner had also submitted affidavit dated 06.07.2015 stating that the name of his father's father was 'Venkaiah' but he was also called 'Yenkaiah' and 'Hanumaiah'. This affidavit was attested by the learned IV Special Metropolitan Magistrate, Cyberabad, Kukatpally. However, the Executive Engineer, (HG), North Division of the Board, rejected his request for transfer of the house, *vide* proceedings dated 03.12.2014, on the ground that his father had played a fraud. Thereafter, the Executive Engineer reiterated this rejection in his proceedings dated 18.05.2017 and 31.05.2018. The petitioner asserts that at no point of time did any other party raise a claim and the Board itself corresponded with

his father, during his lifetime, and thereafter, with him, and therefore, the question of any fraud having been committed by his father in relation to the allotment did not arise. It is in these circumstances that he assails the rejection proceedings and seeks a consequential direction to transfer the subject house property in his name.

By order dated 04.07.2018 passed in this writ petition, *status quo* obtaining as on that day with regard to possession over the subject property was directed to be maintained. This interim order was extended thereafter from time to time and on 21.08.2018, until further orders. It was made absolute on 28.09.2018 when the vacate stay petition filed by the Board was rejected.

Perusal of the impugned proceedings reflects that the stand of the Board was that the house in question was originally allotted on rental basis to M.Venkaiah, s/o. Balaiah, but thereafter, representation dated 16.12.1969 was received from A.Shankaraiah claiming to be the son and legal heir of A.Venkaiah and seeking transfer of the tenancy in his name. The said A.Shankaraiah was stated to have executed an affidavit in which he gave his name as A.Shankaraiah, s/o. A.Yenkaiah, and submitted the death certificate of A.Venkaiah. The erstwhile Board believed his representation and transferred the tenancy in his name, by proceedings dated 14.04.1970, and entered into a rental deed with him. The Board also conceded that the tenancy was converted into a hire purchase agreement and at that time, A.Shankaraiah executed affidavit dated 03.11.1977 showing his name as A.Shankaraiah, s/o. Yenkaiah. The lease-cum-sale agreement was executed by him in October, 1978 on the same lines. According to the Board, the petitioner was not at all related to M.Venkaiah, s/o. Balaiah, the original allottee, and the petitioner's father got the allotment transferred in his name by falsely claiming to be the son

of the allottee by producing a fake/fabricated death certificate and then got the allotment converted into a hire purchase agreement. This is the basis on which the Board refused to transfer the subject house property in the name of the petitioner and called upon him to produce documentary proof to show that his father and he were the descendents of the original allottee, M.Venkaiah, s/o. Balaiah.

In its counter-affidavit, the Board, speaking through its Executive Engineer (HG), North Division, stated as under:

The subject house was originally allotted by the erstwhile Andhra Pradesh Housing Board on rental basis to one M.Venkaiah, s/o. Balaiah. The name mentioned by the applicant himself in his application dated 17.05.1968 was M.Venkaiah, s/o. Balaiah. A rental agreement was executed by him but in the said rental agreement, his initial was shown as 'A' at one place and as 'M' at another. The name was given by the allottee himself as M.Venkaiah or A.Venkaiah. Representation dated 16.12.1969 was received from A.Shankaraiah claiming to be the son and only legal heir of A.Venkaiah and seeking transfer of the tenancy in relation to the subject house property in his name. A.Shankaraiah executed an affidavit in which he gave his name as A.Shankaraiah, s/o. A.Yenkaiah, and submitted the death certificate of A.Venkaiah. Believing him, the erstwhile Board transferred the tenancy in his name by proceedings dated 14.04.1970 and entered into a rental deed with him, wherein he gave his name as A.Shankaraiah, s/o. A.Yenkaiah. The tenancy was converted into a hire purchase and at that time, A.Shankaraiah executed affidavit dated 03.11.1977 showing his name as A.Shankaraiah, s/o. A.Yenkaiah, and also entered into a lease-cum-sale agreement in October, 1978, wherein his name was shown as A.Shankaraiah, s/o. Venkaiah. A.Shankaraiah repeatedly gave his father's name as Venkaiah/Yenkaiah. By letter dated

19.06.2013, the petitioner claimed to be the son of A.Shankaraiah and sought registration of the subject house property in his name. He submitted photocopies of the death certificate of A.Shankaraiah, s/o. A.Hanumaiah; the death certificate of A.Indramani, w/o. A.Shankaraiah; and the legal heir certificate of A.Shankaraiah, s/o. A.Hanumaiah, in which the names of A.Indramani, the petitioner and five others were shown. The Executive Engineer pointed out that, *vide* letter dated 29.06.2013, the erstwhile Board informed the petitioner that there were two discrepancies in the documents submitted by him with - regard to the name of the father of A.Shankaraiah and his date of death. The petitioner thereupon submitted letter dated 03.09.2013 stating that his grandfather's name was A.Hanumaiah. He again gave letter dated 07.07.2014 stating that his grandfather's name was wrongly entered in the records of the Board as Venkaiah, instead of Hanumaiah. He also submitted a copy of the Gazette of India dated 06.01.1973, wherein Shankaraiah, s/o. Hanumaiah had notified that he had changed his name and would be known as 'Atipamula Shankaraiah'. He produced a letter from the Tahsildar, Ameerpet Mandal, clarifying the date of death of A.Shankaraiah. Letter dated 16.07.2014 addressed by the other legal heirs, stating that they had no objection to the registration of the house property in the name of the petitioner, was furnished. The Award of the Lok Adalat in O.S.No.4359 of 2004 was also produced. The petitioner also submitted the full and final settlement receipts from the remaining legal heirs.

The Executive Engineer however supported the stand taken in the proceedings dated 03.12.2014, 18.05.2017 and 31.05.2018. According to him, the petitioner was in unauthorised possession of the subject house property and steps had to be taken for his eviction and for recovery of damages for such unauthorised occupation. He further stated that his

office was taking steps to file a case before the competent authority under Sections 52 and 53 of the Telangana Housing Board Act, 1956, in that regard and in the event the petitioner suffered any adverse order before the competent authority, he had a right of appeal under Section 55 of the said Act. He asserted that disputed questions of fact would have to be resolved in this case and it was therefore not amenable to resolution under Article 226 of the Constitution.

The petitioner filed a reply-affidavit in response to the above counter. Therein, he stated that there was a discrepancy in relation to his grandfather's name from the very beginning as he was shown as M.Venkaiah/A.Venkaiah/A.Yenkaiah at different points of time. He pointed out that the erstwhile Board had admittedly dealt with his father in October, 1977, when the tenancy in relation to the subject house property was converted into a hire purchase arrangement. He therefore asserted that the Board could not contend that his father had nothing to do with the house property as the entire payments therefor were made by him. He denied that there was any fraud or misrepresentation on the part of his father inasmuch as his father could have had no idea that the tenancy, which existed in the year 1969 when his own father died, would be converted into a hire purchase arrangement in October, 1977. He referred to the offer letter of October, 1977 in proof of the erstwhile Board itself having permitted conversion of the tenancy to an outright sale on hire purchase basis. He again reiterated that it was his father who paid the instalments from 1977 to 1992 for purchasing the subject house property and therefore, the Board could not seek to deny him at this stage.

Heard Ms.Vani, learned counsel representing Mr.L.J.Veera Reddy, learned counsel for the petitioner, and Mr.C.Buchi Reddy, learned standing counsel for the Board.

Though the Board would contend that the case is not amenable to adjudication under Article 226 of the Constitution as it involves disputed questions of fact, this Court is not persuaded to agree. The so called factual disputes are of the making of the Board itself and seem to be founded more on conjecture and apprehension than anything else.

Perusal of the record reflects that the application form submitted to the erstwhile Board on 16.05.1968 showed the name of the applicant as M.Venkaiah. Significantly, the applicant was an illiterate and affixed his left thumb impression thereon. He would not have therefore been aware as to how his name was shown in this application. The provisional allotment on rental basis by the erstwhile Board under the proceedings dated 14.10.1968 also showed his name as M.Venkaiah. It may be noted that the father of the petitioner, A.Shankaraiah, addressed letter dated 01.04.1970, which was received by the erstwhile Board on 02.04.1970, stating that his father, A.Venkaiah, the original tenant of the subject house property, had died on 16.09.1969 and sought transfer of the tenancy in his favour. This letter indicated the name of the allottee as A.Venkaiah. The petitioner's father then entered into a lease-cum-sale agreement with the erstwhile Board on 06.10.1978, wherein he described himself as the son of Venkaiah without indicating the initial. It is not in dispute that it is on the strength of this agreement that the petitioner's father paid the monthly instalments due for outright purchase of the subject house property.

An issue however arose when the petitioner's father died and the petitioner produced his death certificate, showing his name as A.Shankaraiah, s/o. A.Hanumaiah. It is on this basis that the Board now asserts that a fraud was played and that the petitioner has nothing to do with the original allottee, Venkaiah. Reference may however be made to

the details of the family members furnished by Venkaiah to the erstwhile Board. Be it noted that this proforma was obtained by the petitioner from the office of the Board itself under the Right to Information Act, 2005. Therein, the allottee, Venkaiah, furnished the names of his family members as under:

- | | | |
|----------------|---|-----------------|
| 1. Shankaraiah | - | son |
| 2. Nagamani | - | daughter-in-law |
| 3. Chandrakala | - | granddaughter |
| 4. Neela | - | granddaughter |
| 5. Venu | - | grandson |

A.Shankaraiah, the father of the petitioner, when he entered into a hire purchase agreement with the erstwhile Board furnished the details of his family, wherein he showed his wife's name as A.Indiramani and his daughters' names as Chanderkala, Neela, Eshwari Bai, Padma and Jyoti and his son's name as Venu Gopal.

Be it noted that O.S.No.4359 of 2004 was filed by Chandrakala, Leela, Eshwaramma, Padma and Jyoti against A.Venu Gopal, the petitioner, and his mother, Indiramani. Though there is a discrepancy in relation to the name of the petitioner's sister, *v/z.*, Neela/Leela, it is relevant to note that the signature affixed by the petitioner's father on the form submitted to the erstwhile Board clearly shows that he could not have filled in the details of his family members himself. He signed in Telugu and he may not have known English at all. Therefore, his mentioning of his daughter's name as Leela may have wrongly been entered as Neela. The discrepancies in relation to the name of the grandfather of the petitioner and the name of his mother are more significant. The details furnished by Venkaiah, the original allottee, showed the name of his daughter-in-law, i.e., the name of Shankaraiah's wife, as Nagamani but she was thereafter described as Indiramani or Indramani. The name of the original allottee was shown as M.Venkaiah,

A.Venkaiah and A.Yenkaiah and is now stated to be A.Hanumaiah, as per the petitioner.

As already pointed out above, the original allottee was an unlettered man and the mentioning of his name as M.Venkaiah in the application had no consequence as he may not even have known as to how his name was shown therein. Further, during yesteryears, it was customary for people, especially those from rural origins, to be called by multiple names and pet names. Therefore, no significance can be attached in itself to the use of different names by the same person. What is of more relevance is the fact that no other person has come forward before the Board claiming rights under the so called original allottee, adverse to the interest of the petitioner who claims to be his grandson and who seems to have bought over the interest of the other legal heirs, viz., his sisters. Be it noted that he also produced proof before the Board of having settled their monetary claims in terms of the Lok Adalat Award.

Another pertinent and admitted fact that weighs heavily against the stand now sought to be taken by the Board is that it was the petitioner's father, A.Shankaraiah, who paid the instalments towards the outright sale of the subject house property on hire purchase basis from 1977-1992. As rightly pointed out, the petitioner's father could have had no inkling of such an offer being made in 1977 when he came forward in 1969 claiming to be the only heir of the allottee, Venkaiah. Therefore, it is clear that none other than the petitioner and hitherto, his father, laid a claim over this house property after the death of the original allottee in 1969. It is not open to the Board to brush aside these irrefutable events that transpired over the past several decades and assert that a fraud was played by the petitioner's father when he claimed to be the legal heir of the original allottee as long back as in the year 1969. The developments

that took place thereafter, including the acceptance of this stand by the erstwhile Board resulting in a hire purchase agreement being executed by it with the petitioner's father in 1978, cannot be ignored to the detriment of the petitioner at this late stage. All the more so, when there is no other person claiming the property adverse to the petitioner.

The Writ Petition is accordingly allowed setting aside the impugned proceedings dated 31.05.2018, 03.12.2014 and 18.05.2017 of the Executive Engineer (HG), North Division, Telangana Housing Board. There shall be a consequential direction to the Board to transfer the subject house property bearing No.130/SRT at Sanjeevareddy Nagar, Hyderabad, in the name of the petitioner and undertake all necessary acts in relation thereto, including registration. Any amount payable in relation to such formalities shall be borne by the petitioner and shall be duly communicated to him by the Board. This exercise shall be completed expeditiously and in any event, not later than one month from the date of payment of the required amount by the petitioner.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

28th JUNE, 2019

PGS

SANJAY KUMAR, J