

(1997) 11 KAR CK 0044
In the Karnataka High Court
Case No : Writ Appeal No. 4931 of 1997

Chandrasekhar

APPELLANT

Vs

K.V. Nagendra and Others

RESPONDENT

Date of Decision : 05-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Co-operative Societies Act, 1959 — Section 105, 70
Transfer of Property Act, 1882 — Section 54

Citation : (1998) ILR (Kar) 1125 : (1998) 1 KarLJ 688

Hon'ble Judges : G.C. Bharuka, J;Chidananda Ullai, J

Bench : Division Bench

Advocate : Sri A.V. Gangadharappa, for the Appellant; Sri M.S. Padmarajaiah, for Sri R.S. Ravi and Sir Keshava Murthy, for the Respondent

Judgement

G.C. Bharuka, J.—The present appellant is a member of the Jayanagar Housing Co-operative Society registered under the provisions of the Karnataka Co-operative Societies Act, 1959 (in short "Act"). The said Society-respondent 4 has formed a layout called Kadirenahalli Layout (now known as Padmanabha Nagar) for distributing sites to its members.

2. The present appellant being a member of the said Society, in the month of August, 1971, made an application for allotment of a site measuring 30" x 45" to the Society with the initial deposits. Accordingly, during the year 1974 site bearing No. 464 was allotted in his favour. Subsequent thereto, as demanded by the Society, the appellant deposited the entire consideration amount being Rs. 7,200/- on 21-3-1981. But admittedly, no document for transfer of land or lease-cum-sale agreement as was required to be executed by the bye-laws of the Society was executed. According to the appellant, despite repeated reminders, he could not get a positive response in respect of the above. Therefore, he addressed a letter (Ex. P-3) on 5-8-1985 to the Secretary requesting him to do the needful in the matter. In response thereof, the Secretary under his letter dated 8-8-1985 (Ex. P-3a), merely requested the appellant to see him in his

office on 14-8-1985 without indicating anything further regarding the request of the appellant. Under these circumstances the appellant raised a dispute before the Joint Registrar of Co-operative Societies by filing an application on 8-5-1989 u/s 70 of the Act. Subsequently, the said dispute was referred by the Joint Registrar to the respondent 3-Deputy Registrar for final disposal in accordance with law.

3. During the course of the hearings before the Deputy Registrar it was disclosed by the Society that the allotment made in favour of the appellant had already been cancelled on 6-4-1983 and it has already been reallotted to Sri K.V. Nagendra respondent 1 herein under a lease-cum-sale agreement dated 6-11-1987 (Ex. R-3). It was also placed on record that pursuant to the said reallotment, the first respondent was put on possession over the site on 17-12-1987 (Ex. R-4).

4. The appellant having, learnt about the said facts filed an application for amendment of his pleadings, which was allowed on 25-4-1992. Keeping in view the subsequent events, the appellant had prayed for setting aside cancellation of allotment made in his favour as also for cancelling the allotment made in favour of the first respondent and also for putting the appellant in possession of the site after completing all the necessary legal formalities.

5. The learned Deputy Registrar after holding an enquiry and keeping in view the materials placed on record came to the conclusion that since the appellant had failed to remit the additional amount of Rs. 675/- as per the notice dated 21-8-1982 (Ex. R-I), the Society had rightly cancelled the allotment made in his favour, by his order dated 18-10-1993 (Annexure-A). The appellant being aggrieved by the said order preferred an appeal u/s 105 of the Act before the Appellate Tribunal which was allowed by order dated 31-7-1995 (Annexure-B). The Tribunal on the basis of the evidence and materials placed before it, set aside the order of the Deputy Registrar by holding that: (I) the additional amount of Rs. 675/- which was sought to be realised and the non-payment of which persuaded the Society to cancel the allotment was merely an additional amount to meet the expenditure for providing amenities like water, electricity and repair of the roads and the same could have been realised only by a legal process without causing cancellation of the site, (II) the notice dated 12-1-1982 at Ex. R-I demanding the additional amount of Rs. 675/- was never served on the appellant and therefore for non-compliance thereof, the allotment of the site could not have been cancelled, (III) there was no resolution passed by the Board of Directors either cancelling the allotment made in favour of the appellant or the reallotment made in favour of the first respondent, and (IV) the dispute as raised before the Registrar u/s 70 of the Act was well within time.

6. After recording the said findings, the Tribunal set aside the order of the Deputy Registrar and directed the respondent-Society to take appropriate action in the matter, in accordance with law and keeping in view the observations made in its order and allowed the appeal with costs.

7. The said order of the Tribunal was subjected to challenge before this Court by the first respondent as well as the Society. The learned Single Judge after hearing the parties agreed with the finding of the Tribunal that the cancellation of allotment of the site made in favour of the present appellant was unjustified; but he felt persuaded to hold that since the first respondent was in possession of the site since 17-12-1987, therefore it would be inequitable to disturb his possession and accordingly directed the Society to allot an alternative site to the appellant in the adjacent layout called "Gublal and Turehalli Layout" which is in the process of being developed.

8. Aggrieved by the second part of the order passed by the learned Single Judge, the present appeal has been preferred by the original allotted-the appellant. The findings regarding non-service of notice on the appellant and non-passing of any resolution by the Board of Directors are the findings of facts recorded by the Tribunal and those findings could neither have been interfered by this Court nor in fact has been interfered with. In the said view of the matter, the question that arises is, whether the learned Single Judge was justified in granting relief to the first respondent at the detriment of the appellant by invoking benevolence or purported equitable jurisdiction. The Supreme Court in its recent judgment in the case of Haryana Urban Development Authority and Another Vs. Roochira Ceramics and Another, , para 4 has held that.-

"It has been held repeatedly by this Court that the power under Article 226 is the power of judicial review. The High Court can only examine the procedural correctness. It cannot go into the merits of the controversy like an Appellate Authority. No finding is recorded by the High Court in this case that the procedure adopted by the Estate Officer was either not in accordance with the statutory provisions or was in violation of the principles of natural justice. The High Court obviously acted as an Appellate Authority and that too as a benevolent Appellate Authority. There is no room for any benevolence under Article 226 of the Constitution. If the Court departs from law and enters the arena of benevolence the perils and pitfalls are too many to recount. There will be no objective standards of judging. Justice becomes personalised. It would vary from Judge to Judge. In the absence of any procedural irregularity, the High Court had no jurisdiction to interfere in the matter".

Therefore keeping in view the law laid down by the Supreme Court, this Court can interfere with the order of a Tribunal only if it is demonstrated before this Court that the procedure adopted by the Tribunal was incorrect in the sense that it defied the basic requirements of fairness and principles of natural justice or that the findings arrived at by the Tribunal is perverse, in the sense that no prudent man on the basis of the evidence led before him could have come to the conclusion as arrived at by the Tribunal. No such grievance was raised by the contesting respondents before the learned Single Judge. Therefore, in our opinion, keeping in view the law laid down by the Supreme Court, the learned Single Judge could not have given a direction for permitting the first respondent

to continue in possession over the site which was illegally allotted to him at the detriment of the vested right acquired by the appellant herein.

9. Even otherwise, so far as the equity pleaded by the first respondent is concerned, the Tribunal itself has gone into that aspect and has held, that too is not in his favour. It has been noticed by the Tribunal that the first respondent is already having a house in Bangalore which stands in the name of his father. It has also been noticed that no permanent structure of any nature has been put up on the site by the contesting respondent. Over and above, the lease-cum-sale agreement that the Society has executed in his favour has already come to an end today. Therefore, he has no subsisting right in the land.

10. Sri Padmarajaiah, learned Counsel appearing for the first respondent has placed before us various decisions to substantiate the right of the first respondent based on the provisions of Section 54 of the Transfer of Property Act and some of the provisions of the Specific Relief Act to impress upon us that the dispute of the present nature could have been resolved only by the Civil Court. In our opinion, it is not necessary for us to discuss that aspect of the argument in any greater detail. It is for the reason that a dispute of the nature involved herein has to be necessarily resolved under the provisions of the Act only since Section 70 thereof specifically bars the jurisdiction of the Civil Courts.

11. For the said reasons, we set aside the order of the learned Single Judge to the extent he has directed the Society to allow the first respondent to continue in possession of the site in question. Now the Society has to act in accordance with the directions of the Tribunal.

12. The appeal is accordingly allowed in terms of the prayer made with costs assessed at Rs. 2,000/- to be paid in equal proportion by the first respondent and the Society to the appellant through a crossed Bank Draft within one month from today.