(2000) 08 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 553 of 2000

Chintalapati Satyanarayana Raju APPELLANT

Vs

A.P. Housing Board, Hyd. and others RESPONDENT

Date of Decision : 08-08-2000

Acts Referred:
Andhra Pradesh Housing Board Act, 1956 — Section 29, 70, 71

Citation : (2000) 5 ALD 472

Hon'ble Judges : Bilal Nazki, J

Bench : Single Bench

Advocate : Mr. A. Satyaprasad, for the Appellant; Mr. Rama Chandra Reddy, Mr. B. Amaranathareddy and Mr. B. Kamalakar Rao, for the Respondent

Judgement

1. The Petitioner has challenged advertisement No.2322/EM-2/ EE(WD) 99, dated 15-12-1999 published in daily newspaper ''Eenadu'' on 27th December, 1999 and also the subsequent allotment of houses to respondents 4 and 5. By this advertisement it was notified that 47 flats of various categories would be sold in Phase-III MIG Flat, Kukatpalli, Phase-III LIG flats, Kukatpalli, Phase-IV LIG flats Kukatpalli, Phase-IV MIG-A flats. The said notification invited applications from the applicants who intend to purchase such flats and houses. The notification stated that the houses would be sold on first come-first serve basis. It is stated that under Sections 70 and 71 of A.P. Housing Board Act, 1956 the Government has the power to make rules and regulations and the Government has issued regulations for the purpose of management, allotment and sale of various categories of houses. According to the petitioner, the houses in question are regulated by G.O. Ms. No.9, dated 21st January, 1975. These regulations laid down the procedure to be adopted from the stage of inviting the applications to the allotment. It is submitted that the notification under challenge was contrary to the regulations of 1975 and there has been no notice to him as contemplated under these regulations. It is further stated that the mode of first come-first serve is not a mode prescribed by regulations and it is illegal. The petitioner, however, on issuing the notification on 27th December, 1999

approached the second respondent and deposited an amount of Rs.52,400/- on 27-12-1999 i.e., on the same day when the notification had been published. He submits that, he had reached the office at 9.00 a.m., the Officers had yet to come, he waited till the officials started coming by 9.30 a.m,, he was the only person to submit his pay order in the said office at that time. After he deposited the amount, some other intended purchasers came to the office of the respondents and according to the petitioner he was the first person to submit the application form along with the pay order. According to him, the respondents 4 and 5 submitted their application forms and pay orders after him but they were placed at Serial Nos. 1 and 2 with an intention to allot the flats in their favour. In the category in which the petitioner and respondents 4 and 5 had applied there were only two flats available. He further states that, there was no register maintained and the time was also not noted. It is stated that it is mala fide exercise by respondent No.2 himself in order to facilitate the allotment of houses to respondents 4 and 5. Some allegations have been levelled against respondent No.4 as well. The notification has been challenged on two grounds, one that first come-first serve basis is not permissible by rules, secondly it is contended that even if it is permissible the petitioner was first one to apply and respondents 4 and 5 had applied after him, therefore he was entitled to flat.

2. Counter has been filed and in the counter it has been staled that the respondents have the right to allot houses on first come-first serve basis. They rely on Regulations issued in G.O. Ms. No.63, dated 16-8-1997. It is stated that, in the present case the regulations of 1975 do not operate but Regulations of 1997 operate. During the hearing it was not disputed that Regulations of 1997 would operate. Secondly, it was contended by the learned Counsel for the respondent Corporation that the petitioner was not the first one to apply he was in fact the eighth person and after the flats were allotted to respondents 4 and 5 still there were flats available and the petitioner had been asked to identify a flat which he refused. When this assertion in the counter-affidavit was noticed by the Court, the respondent Corporation was asked to state as to whether those flats are still available, the respondent Corporation filed a statement showing that 27 flats are available and it is stated that they will have no objection if any one of those flats is purchased by the petitioner. However, the petitioner did not agree to this proposal because he was interested in a bigger flat and the flats those are available with the Corporation are single room fiats. It is also contended by learned Counsel for respondents that on 27th December, 1999 itself the allotment was made and the petitioner did not protest. He was given back the demand draft which he accepted, thereafter as an afterthought after two weeks he filed this writ petition. Since the petitioner has accepted the demand draft back he cannot be heard of complaining about the allotments. It is further contended that the petitioner took a chance and having failed he challenged the mode of sale of houses by the respondent Corporation.. If he was aggrieved of the mode of sale by the respondents he should have challenged it without participating in such a process.

3. Since it is not disputed that Regulations of 1997 are applicable, therefore this Court would examine in the light of these Regulations whether the mode adopted by the respondents for sale of flats was legal, or not. According to the learned Counsel for the petitioner, even under these regulations the houses could be allotted by drawing the lots. He refers to Regulation 16(i) which lays down:

"16.(i) A notice specifying the date, time venue of the drawal of lots shall be intimated to all the eligible applicants 10 days before the drawal of lots either individually or through notification published in daily newspapers, as the case may be."

4. However, he submits that if there is no response to the notification issued for sale of houses the respondents may in terms of Regulation 28(i) sell the houses on first come-first serve basis. According to him, Regulation 16(i) is clear that if the houses are to be sold for the first time there is no option with the respondents but to effect the sales by drawing of lots. The learned Counsel for respondents, however, submits that though it is true that generally the mode prescribed for allotment of the houses either by way of sale or by hire purchase is by drawing of lots but there are certain exceptions. He refers to Regulation 28(iii) which reads as under:

"28.(iii) In respect of vacant houses subsequent to cancellation of allotment in default of payment of instalments or dues and for any other reason, a fresh notification shall be issued for such vacant houses available in twin cities of Hyderabad and Secunderabad and for the rest of the areas the houses shall be allotted on first-come-first served basis."

5. He submits that, if the plots or houses which are subject matter of dispute had been allotted earlier to some other allottees and the allotment had been cancelled because those allottees became defaulters, these houses can be sold on first come-first serve basis. Since the respondents had the power under Regulation 28(iii) to sell the houses on first come-first serve basis I do not think that the impugned action of the respondents to allot the houses to respondents 4 and 5 can be quashed on this ground.

6. The learned Counsel for the petitioner, however, relied on various judgments including Chenchu Rami Reddy and Another Vs. Government of Andhra Pradesh and Others, . Para 10 of the judgment reads as under:

"10. We cannot conclude without observing that property of such institutions or endowments must be jealously protected. It must be protected, for, a larger segment of the community has beneficial interest in it (that is the raison d''etre of the Act itself)- The authorities exercising the powers under the Act must not only be most alert and vigilant in such matters but also show awareness of the ways of the present day world as also the ugly realities of the world of today. They cannot afford to take things at their face value or make a less than the closest-and-best-attention approach to guard against all pitfalls. The approving authority must be aware that in such matters the trustees, or persons authorised to sell by private negotiations, can, in a given case, enter into a secret or invisible underhand deal or understanding with the purchasers at the cost of the concerned institution. Those who are willing to purchase by private negotiations can also bid at a public auction. Why would they feel shy or be deterred from bidding at a public auction? Why then permit sale by private negotiations which will not be visible to the public eye and may even give rise to public suspicion unless there are special reasons to justify doing so? And care must be taken to fix a reserve price after ascertaining the market value for the sake of safeguarding the interest of the endowment. With these words of caution we close the matter".

Another judgment relied by the petitioner is Chairman and Managing Director, SIPCOT, and Madras and others Vs. Contromix Pvt. Ltd. by its Director (Finance) Seetharaman, Madras and another, . This judgment lays down:

"12. In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold. This can be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public auction after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price. But, many times it may not be possible to secure the best price by public auction when the bidders join together so as to depress the bid or the nature of the property to be sold is such that suitable bid may not be received at public auction. In that event, the other suitable mode for selling of property can be by inviting tenders. In order to ensure that such sale by calling tenders does not escape attention of an intending participant, it is essential that every endeavour should be made to give wide publicity so as to get the maximum price. These considerations which govern the sale of public property have been held to be applicable to a sale of property by the State Financial Corporation u/s 29 of the Act in Mahesh Chandra case. In that case this Court has held that sale by public auction is universally recognised to be the best and most fair method and is beyond reproach and, if it is not possible to adopt the said method, sale may be held by inviting tenders, but in that event every endeavour should be made to give wide publicity to get the maximum price. The said decision cannot therefore, be construed as laying down that a sale by tender is impermissible and invalid. The learned Judges, in that case, have referred to the decisions of this Court in Sachidanand Pandey v. State of W.B. and Haji T.M. Nassau Rawther v. Kerala Financial Corporation, wherein it has been held that one of the modes of securing the public interest, when it is considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. It cannot, therefore, be said that a sale by inviting tenders is ipso facto invalid. The valid of such a sale will have to be considered in the light of the facts and circumstances of the particular case."

7. The petitioner also rely on Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, . Para 14 of the judgment lays down:

"14. The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and Public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their dealings should be aboveboard. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouratism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders. That is why the Court repeatedly stated and reiterated that the State-owned properties are required to be disposed of publicly. But that is not the only rule. As O. Chinnappa Reddy. J., observed ''that though that is the ordinary rule, it is not an invariable rule''. There may be situations necessitating departure from the rule, but then such instances must be justified by compulsions and not by compromise. It must be justified by compelling reasons and not by just convenience."

8. There is another judgment in Common Cause, a Registered Society v. Union of India 1996(6) SCC 530, which is not relevant for the purpose of this case.

9. All these judgments show that, whenever the interests of the State or its functionaries is concerned it should be the endeavour of the authorities to sell the properties by ensuring that the maximum possible price is fetched by the State. Therefore, the mode of public auction or tendering is accepted by the Supreme Court. This mode is prescribed because on the one hand it would fetch the maximum price and on the other hand the chances of arbitrariness would be minimised. All the cases to which a reference has been made herein above are cases in which Financial Institutions were the parties. In the present case the mode adopted by the respondents was permissible under Regulations. The Government has the power to frame Regulations in terms of the Act. These regulations have not been challenged in this Court. Since the regulations have not been challenged, therefore it will not be appropriate for this Court to test the legality of those regulations. Even otherwise, the modes directed by the Supreme Court to be adopted may not be relevant for the purpose of allotment of houses by a Housing Corporation because the houses are being provided by the Corporation to houseless persons and usually these Corporations are not profit oriented and are meant to provide houses to houseless persons at affordable costs. If the houses are always put to auction, it may certainly give higher price to the Corporation but all the same these houses may remain out of reach of poor people and middle income group people. By adopting the method of first come-first serve, this Court does not feel that there has been any arbitrariness in the procedure. The notification was for everybody and everybody was free to approach the respondents at the earliest.

10. Mala fides were passed into service, but there is not sufficient material before this Court on the basis of which that question could be decided. The other

contention of the petitioner that he was the first person to approach the respondents for allotment of the house has been denied by the respondents. They have categorically stated that he was the eighth person to approach. Though this is a question of fact which cannot be decided in these proceedings by this Court, yet the Court finds certain circumstances which go against the petitioner''s contention. Had he been the first person to reach the respondents with a request to allot him the house he would have not immediately thereafter accepted the Demand draft back, he would have protested and he would have immediately rushed to the Court. He accepted the Demand draft back and after some time came to this Court.

11. For these reasons, I do not find merit in this writ petition which is accordingly dismissed.

