
(2003) 07 AP CK 0076

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17199 of 1993

G.V.N. Bharathan and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Constitution of India, 1950 — Article 32

Citation : (2003) 5 ALD 93 : (2003) 6 ALT 464

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : S. Ramachandra Rao, for the Appellant; G.P. for GAD, General and J. Prabhakar, S.C. for APHB, for the Respondent

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—The petitioners, 72 in number, have filed this writ petition to issue a writ of mandamus declaring the action of the Government in not selling the Kaladera Government Colony Houses/quarters to the petitioners on hire purchase system as illegal, arbitrary and unconstitutional and to direct the Government to sell said houses to the petitioners on hire purchase system in terms of G.O.Ms.No.130 Housing, dated 23-12-1974.

2. Sri S. Ramachandra Rao, learned Senior counsel appearing for the petitioners submits that the quarters at Kaladera Government Colony, Hyderabad, were constructed by the A.P. Housing Board, way back in the year 1960 and they were later transferred to the State Government. All the said quarters were constructed by the A.P. Housing Board initially under the rental housing scheme in the same manner as that of those quarters, which were constructed in Yakutpura Colony. The petitioners have been allotted the said houses on rental basis, and some of them also retired from service and some of them are on the verge of retiring. They have made a representation on 01-06-1992 to the authorities to permit them to buy the said quarters at reasonable rate, since they are staying in those quarters for a long time. It is stated that earlier 88 quarters built at Yakutpura

and Domalguda under the same scheme were sold to the Government employees, who were in occupation thereof as tenants, on hire purchase basis vide G.O.Ms.No.130, dated 23-12-1974. The case of the petitioners is also similar to the said case and they fulfill all the conditions stipulated in the said G.O.Ms.No.130, dated 23-12-1974 and they are entitled for consideration on the same basis. But, despite all these, the Government is not willing to sell the said quarters to them and therefore, they challenge action of the Government on the ground of it being discriminatory and illegal.

3. On the other hand, the learned Advocate General submits that the orders of the Government in G.O.Ms. No. 130, dated 23-12-1974, have no application to the facts of the case on hand and it cannot be said that the petitioners are similarly situated from that of those employees against whose favour certain quarters of the A.P. Housing Board were transferred, subject to certain conditions. It is stated that the quarters covered in G.O.Ms.No.130, dated 23-12-1974, belong to the A.P. Housing Board, whereas all the quarters of Kaladera Government Colony, belong to the Government. A perusal of the orders of the Government in G.O.Ms. No. 164, dated 02-08-1962, makes it clear that the said quarters of Kaladera Government Colony, were constructed by the A.P. Housing Board at the request of the Government and the funds financed by the Government. The A.P. Housing Board has put forth two alternative conditions, which are not acceptable to the Government, and it is open for the Government to take over the entire estate consisting of 184 flats constructed under the Rental Housing Scheme together with the loan liability thereon and that the unspent balance of the loan of Rs.22-57 lakhs so far drawn by the A.P. Housing Board under the Rental Housing Scheme will be refunded to Government without interest. The Government decided to take over from the A.P. Housing Board the entire estate consisting of 184 flats in Kaladera and Panjagutta areas and after construction of all the quarters is completed in all respects by the A.P. Housing Board, the ownership of these quarters will vest with the Government and the Public Works Department and the A.P. Housing Board is only the executing agency in respect of the said quarters. Accordingly, the Government directed that the said quarters be transferred to the Chief Engineer (Buildings) P.W. Department for maintenance etc. The allotment of the quarters to the State Government employees will be made by the controller of Accommodation under the usual rules. The Government has decided that the unspent balance out of the loan of Rs.22-57 lakhs so far drawn by the A.P. Housing Board under the Scheme be refunded to the Government without interest. Thus, there is no dispute that all the quarters of Kaladera Government Colony, belong to the Government only and the A.P. Housing Board is not the owner of the said quarters.

4. The Government vide its G.O.Ms.No.130, dated 23-12-1974, considered the request of the employees of Yakutpura and Domalguda subject to certain conditions. It is stated that admittedly, the said quarters situated at Yakutpura and Domalguda belong to A.P. Housing Board but not to the Government. Therefore, it cannot be said that the facts and circumstances of this case are

similar to that of the persons covered by G.O.Ms.No.130, dated 23-12-1974.

5. No doubt, the Government issued G.O.Ms.No.130, dated 23-12-1974 in peculiar facts and circumstances, but it is stated that the Government changed its policy, and therefore, several such requests have been rejected by its orders in G.O.Ms.No.121, Transport, Road and Buildings (B-II) Department dated 05-04-1983. In the said G.O. it is stated that there is no single case in which the quarters constructed by the Government and allotted to Government servants, were later sold to them. The representations made by similarly situated employees, who are residing in the colonies of the twin cities of the Hyderabad and Secunderabad, to sell the said quarters on hire purchase basis, have been carefully considered by the Government and held that it is the general policy of the Government that the said quarters are intended for occupation of the Government servants, but not to sell. Similar orders were also passed on 13-04-1983 in G.O.Ms.No.243, General Administration (Accom-B) Department, stating that the Government after careful consideration of all the points involved, rejected the request of the retired Government employees for the sale of the quarters on hire purchase scheme to them as the policy of the Government is to retain the quarters for occupation of the Government servants in-service and not for sale. Again similarly situated persons have been making several representations and the same was the subject matter of enquiry of the Cabinet Sub Committee and after perusal of the report of the Cabinet Sub Committee, the Government issued orders in G.O.Ms.No.287 General Administration (Accom-B) Department, dated 21-06-1985, stating that the Government already rejected the said request for sale of the residential quarters in the colonies situated in the twin cities in G.O.Ms.No.121, dated 05-04-1983 and G.O.Ms.No.243, dated 13-04-1983, and the Government again carefully considered various representations and having regard to the circumstances of the cases and the reasons already mentioned in the aforesaid Government Orders, rejected the request made for sale of Government quarters to the existing occupants in the twin cities.

6. The said order of the Government in G.O.Ms.No.287, dated 21-06-1985, was questioned before the Hon"ble Supreme Court in Writ Petition No.11734 of 1985 under Article 32 of the Constitution of India with C.M.P.No.33675 of 1985 and the Hon"ble Supreme Court by order dated 03-02-1986 dismissed the writ petition with the following order:

"After hearing learned counsel for the petitioners at quite at some length, we find no lawful justification for interference with the impugned G.O.Ms.No.287, dated 21, 1985 issued by the State Government of Andhra Pradesh. The Government after careful consideration of various representations made and having regard to all the circumstances of the case and for reasons mentioned in the earlier G.O. Ms., found it difficult to accede to the request of the superannuated Government officials for outright sale of the Government quarters occupied by them. We are informed that there is acute shortage of housing accommodation in the State and

there are as many as nearly 10,000 Government employees still in the waiting list.

7. When once the policy decision has been upheld by the Apex Court in the said writ petition, it is not possible to accept any of the contentions of the learned Senior counsel appearing for the petitioners. The contentions raised by the petitioners are squarely covered by the aforesaid judgment of the Apex Court, and therefore, no relief can be granted to the petitioners. As rightly contended by the learned Advocate General that after issuance of G.O.Ms. No. 130, dated 23-12-1974, the Government took a policy decision, which was upheld by the Apex Court, and even otherwise, the quarters at Yakutpura and Domalguda belong to the A.P. Housing Board and not to the Government and the Government residential quarters were never sold to any of the serving or retired employees.

8. It is also stated that questioning the action of the Government, a batch of writ petitions in Writ Petition No.6443 of 1992 & batch, were filed on the file of this Court, which were dismissed following the Division Bench Judgment in Writ Appeal No.33 of 1992, wherein it was held that the Government servants in occupation of the Government quarters have no vested right to continue in occupation of the premises even after their retirement. The quarters are essentially intended to provide accommodation to the Government servants and by reason of their continuous occupation in the Government quarters for a long time even after their retirement, they do not get any vested right and moreover, the Government servants who are in actual service, are deprived of the benefit of allotment of the quarters. The Government servants who are in occupation of the Government quarters have no semblance of right to be in occupation of the same after their retirement. Accordingly, following the aforesaid Division Bench Judgment in Writ Appeal No.33 of 1992 the Writ Petition No.6443 of 1992 and batch were dismissed by order dated 14-07-1993.

9. Viewed from any angle, I cannot accept the arguments of the learned Senior Counsel appearing for the petitioners, to issue a direction to the Government to consider the cases of the petitioners for sale of the quarters in their occupation on hire purchase scheme.

10. The A.P. Housing Board in its letter No.7358/E4/AEO(A)/92, dated 17-07-1992, addressed to the Deputy Secretary to Government, Housing (HB) Department, Government of Andhra Pradesh, Hyderabad, stating that all the quarters in Kaladera Colony and Panjagutta colony vest with the Government and the A.P. Housing Board has nothing to do with the said quarters and therefore, it is for the Government to take any decision.

11. It is stated that out of 72 petitioners 27 already retired from service as on November, 1997, 3 died and 3 have vacated the quarters. Neither the petitioners nor the legal heirs have any right over the quarters to purchase the same on hire purchase system, as prayed by them.

12. Having regard to the facts and circumstances of the case, and in view of the aforesaid judgment of the Apex Court, no relief can be granted to the petitioners, except granting some time to vacate the quarters with regard to the dependents of the deceased petitioners and retired petitioners, and to handover the vacant possession to the Government.

13. Accordingly, the writ petition is dismissed, granting six months time to the retired petitioners and the dependents of the deceased petitioners, to vacate the premises and handover the vacant possession of the quarters occupied by them. However, there shall be no orders as to costs.